NOMINATION OF EDWARD H. LEVI TO BE ATTORNEY GENERAL

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

EDWARD H. LEVI, OF ILLINOIS, TO BE ATTORNEY GENERAL

JANUARY 27, 28, AND 29, 1975

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
49-917 WASHINGTON : 1975

NOMINATION OF EDWARD H. LEVI TO BE ATTORNEY GENERAL

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

EDWARD H. LEVI, OF ILLINOIS, TO BE ATTORNEY GENERAL

JANUARY 27, 28, AND 29, 1975

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
49-917 WASHINGTON : 1975

COMMITTEE ON THE JUDICIARY

JAMES O. EASTLAND, Mississippi, *Chairman*

JOHN L. McCLELLAN, Arkansas
PHILIP A. HART, Michigan
EDWARD M. KENNEDY, Massachusetts
BIRCH BAYH, Indiana
QUENTIN N. BURDICK, North Dakota
ROBERT C. BYRD, West Virginia
JOHN V. TUNNEY, California
JAMES G. ABOUREZK, South Dakota

ROMAN L. HRUSKA, Nebraska
HIRAM L. FONG, Hawaii
HUGH SCOTT, Pennsylvania
STROM THURMOND, South Carolina
CHARLES McC. MATHIAS, JR., Maryland
WILLIAM L. SCOTT, Virginia

CONTENTS

NOMINATION OF EDWARD H. LEVI TO BE ATTORNEY GENERAL

MONDAY, JANUARY 27, 1975

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, McClellan, Hart, Kennedy, Bayh, Byrd, Abourezk, Hruska, Fong, Scott of Pennsylvania, Thurmond, and Scott of Virginia.

Also present: Peter M. Stockett, Francis C. Rosenberger, Douglas Marvin and Hite McLean of the committee staff.

The CHAIRMAN. This hearing is on the nomination of Edward Hirsch Levi of Illinois to be Attorney General vice William B. Saxbe.

Notice of the hearing appeared in the Congressional Record on January 16, 1975.

By blue slip, Senator Percy and Senator Stevenson approved the nomination.

Senator Percy.

TESTIMONY OF CHARLES H. PERCY, U.S. SENATOR FROM ILLINOIS

Senator PERCY. Mr. Chairman, I am very honored indeed to present to you a man that I think epitomizes the best and the brightest in America, and I not only feel that we should give consideration to Dr. Levi as next Attorney General but also take into account the extraordinary times in which the country is going and the remarkable opportunity he would have as a member of the President's Cabinet to present his thinking on a wide range of problems and opportunity and challenges that America faces today.

I have had the opportunity of appearing before the Judiciary Committee many, many times to introduce individuals who have been nominated to serve at high levels of Government. Today I have a personal feeling of pleasure and pride in introducing Edward H. Levi, who has been nominated by President Ford to serve as Attorney General. Dr. Levi is a respected legal scholar. He is an eminent educator. He is a man of integrity. He is a man who I have always felt has a hard head and a soft heart, a man who has compassion and understanding but combines it with firmness, determination, a sense of purpose, and direction in anything that he undertakes and I think does represent the very finest the President could have offered to this committee today.

In my judgment, the President has made a superb selection in nominating Ed Levi. In every respect he is an ideal person to lead the Justice Department at this time.

Admitted to the Illinois bar in 1936, Dr. Levi joined the University of Chicago Law School faculty in that same year. In 1940 he came to Washington as Special Assistant to the Attorney General in the Antitrust Division. During his 5 years at the Justice Department he was Chairman of the Interdepartmental Committee on Monopolies and Cartels, Chief of the Consent Decree Section, and First Assistant in the Antitrust Division.

In 1945 he rejoined the University of Chicago Law School faculty and became dean of the law school in 1950. He served as dean until 1962, when he became provost of the university. Since 1968 he has served as university president. As a trustee of the university, I have worked closely with Dr. Levi. It has been a rewarding experience. I speak from firsthand experience in saying that he is a gifted leader as well as an exceptional scholar and educator. I do not imagine there is any individual I have presented to a committee of the Senate that I have known more intimately and seen in many different capacities than Dr. Levi. I have been a trustee at the University of Chicago for 25 years, and during that quarter of a century I have worked with Dr. Levi when he was head of the law school, when he was provost, and certainly intimately as President. In fact, I had almost a conflict of interest when I had to nominate and had the privilege of recommending to the President candidates for the Federal Bench. I can say, I think, without any question, that when I asked Dr. Levi to serve, to permit me to submit his name for the Circuit Court of Appeals, and he turned that opportunity down because of his devotion and dedication to the university, and when I did send in without his permission the only name I have ever submitted to the President as a recommendation for the Supreme Court of the United States from the State of Illinois, I think I need say no more about my own deep feeling as to his quality, his integrity and his judicial qualities.

I think that says a great deal about a human being, about his devotion to his responsibility.

Dr. Levi has served in several other governmental capacities in addition to his tenure with the Justice Department. In 1950 he was counsel to the House Judiciary Subcommittee on Monopoly Power. He has served as a member of the White House Central Group on Domestic Affairs, the White House Task Force on Education, and the President's Task Force on Priorities in Higher Education. He has been awarded honorary degrees from many colleges and universities. His work on behalf of various legal and civic organizations has been extensive, and he has been honored many times by the Chicago community. And I think when a national magazine indicated that during the campus disturbances and riots and I stood alongside him on occasion on the University of Chicago campus and watched how he handled that situation, he was credited with having handled a difficult circumstance in the most superb manner of any college president in the United States, at least in the judgment of one of our national news magazines.

Dr. Levi is well-qualified to be Attorney General for reasons which reach well beyond his distinguished professional record. He is not a

partisan. He is beholden to no one. His qualifications are based on high standards of professional excellence and personal integrity. These qualifications are especially important now to the American people and to the Justice Department.

For too long politics has been permitted to intrude into the Justice Department. Too often, the way to the Attorney General's chair was found in a wholly political role. Political partisanship, combined with recent abuses of the power entrusted to the Attorney General, has eroded public trust in the Department. The American people must have enduring respect for the highest law enforcement official in the land. Attorney General Saxbe began the painstaking process of restoring that respect. I am confident that Dr. Levi will complete the job. And as the members of this committee realize, I have taken the position on the floor of the Senate that I think just as our Secretary of State and our Secretary of Defense have traditionally been taken out of partisan politics, I deeply believe the Attorney General should be taken and removed from partisan politics and partisan participation in campaigns and so forth.

Abuses by some officials of the Justice Department in recent years have taken a serious toll on the many dedicated men and women who devote their talent and energy to the administration of the Department. The morale of Justice Department employees suffered as the Department was caught up in a series of scandals. Only a handful of Department officials were responsible for these misdeeds but their actions adversely affected the entire Department. Attorney General Saxbe improved morale in the Justice Department. Dr. Levi is certain to be an Attorney General who will greatly inspire the members of the Department.

I recommend him most highly to this committee and to the Senate, and look forward to his service as Attorney General if confirmed by the Senate of the United States.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Any questions?

[No response.]

The CHAIRMAN. Senator Stevenson.

TESTIMONY OF ADLAI E. STEVENSON III, U.S. SENATOR FROM ILLINOIS

Senator STEVENSON. Mr. Chairman, I thank you for the opportunity to join with my colleague Senator Percy in introducing to you Edward H. Levi, the chancellor at the University of Chicago, and the President's nominee to be Attorney General of the United States.

I do not want to take your time with a repetition of Senator Percy's statement, and so I will ask that my full statement be included in your record.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement of Senator Stevenson follows:]

TESTIMONY OF SENATOR ADLAI E. STEVENSON

Mr. Chairman and members of the Judiciary Committee, I am delighted to be here today to introduce to the committee Mr. Edward H. Levi of Chicago, nominee for Attorney General. Not often, but occasionally, there comes before the

Senate a presidential nominee of extraordinary distinction. In naming Mr. Levi, the President has chosen an eminent lawyer, renowned legal scholar and a capable administrator; a man whose ability and integrity will be particularly valued at this moment in history. As the president of the American Bar Association recently observed, this is a brilliant nomination.

It is a sad fact that the Department of Justice was a principal victim of the Watergate era. In past years the Department's carefully built reputation for evenhandedness and professionalism was abused by those who took it over. The office of Attorney General became, for a time, a headquarters for political dealing; in two and a half years, we had five Attorneys General.

I believe that the citizens of this country and the dedicated professionals of the Department of Justice deserve a new Attorney General capable of restoring dignity, respect and pride to the administration of justice. Half a century ago the Department underwent an upheaval not unlike that of recent years, and the Attorney General of that day, Harry Daugherty, was finally ousted. President Coolidge then turned to the Nation's community of legal scholars to find a distinguished successor, Harlan Fiske Stone, to head the Justice Department. President Ford's choice of Edward Levi is every bit as fortunate.

Mr. Levi's career in the law began almost forty years ago with his appointment as an assistant professor at the University of Chicago Law School. This began a happy involvement in legal scholarship, which included Mr. Levi's authorship of a classic in jurisprudence, "an introduction to legal reasoning." Not long ago another expert described Mr. Levi as one of the two most brilliant scholars of antitrust law of his generation.

But his achievements have not been confined to ivory tower scholarship. Mr. Levi was the principal draftsman of the Atomic Energy Control Law of 1946—and his work provided the basis for a new approach to domestic control of atomic energy. He spent five years in the antitrust division of the Justic Department as Thurmond Arnold's top assistant and later he served the Congress as counsel to the House Judiciary Subcommittee on monopoly power. Mr. Levi's advocacy before the Supreme Court in cases involving Illinois post-conviction procedures resulted in substantial reform of Illinois' criminal procedure.

And Edward Levi is not only a genius in the law; he is an administrator of proven ability. His stewardship of the University of Chicago Law School led to his appointment as president of the University. He has established a record of innovative but responsible change in curriculum. He has shown a shrewd grasp of budgetary matters in an area of growing financial difficulty for higher education. He has demonstrated, both as dean of the law school and as president of the University, a much-envied ability to attract scholars of the highest quality, to earn the respect of the student body and, in times of stress, to maintain the self discipline of the university.

What Mr. Levi has brought to a great American university, we urgently need now in the the Cabinet; firm and intelligent leadership—and beyond that, distinction of intellect and character. Edward Levi, I am convinced, will bring to the office of Attorney General the scholar's traditional objectivity; a personal probity that is unquestioned; proven administrative skill and valuable experience in the Department he will head.

With this nomination the President has reached toward real distinction. I urge the distinguished members of this committee to recommend the confirmation of Edward Levi with the dispatch that, I believe, his ability and character justify and deserve.

Senator STEVENSON. In nominating Mr. Levi, the President has chosen an eminent lawyer, renowned legal scholar, and a capable administrator, a man whose ability and integrity will be particularly valued at this moment in history.

As the president of the American Bar Association recently observed, this is a brilliant nomination. Edward Levi is not only a genius in the law, he is an administrator of proven ability. He has established a record of innovative, responsible change in curriculum at the University of Chicago. He has shown a shrewd grasp of budgetary matters in an era of growing financial difficulty for higher education. He has demonstrated, both as dean of the law school and as president of that university, a much envied ability to attract scholars of the high-

est quality, to earn the respect of the student body, and in times of stress to maintain the self-discipline at the university.

What Mr. Levi brought to a great American university, he can bring to the Government: firm and intelligent leadership, and beyond that, a rare distinction of intellect and character. Edward Levi will bring to the office of Attorney General the scholar's traditional objectivity, a personal probity that is unquestioned, proven administrative skill, the respect of his peers in education and the law, and valuable experience in the Department he would head. With this nomination, Mr. Chairman, the President has wisely reached for great distinction.

And so I join with Senator Percy in urging you and all of the distinguished members of this committee to look with favor on the nomination of Edward Levi to be Attorney General of the United States.

Thank you.

The CHAIRMAN. Any questions?

[No response.]

The CHAIRMAN. Dr. Levi, will you stand up?

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LEVI. I do.

TESTIMONY OF EDWARD H. LEVI, PRESIDENT, UNIVERSITY OF CHICAGO, NOMINEE TO BE ATTORNEY GENERAL

The CHAIRMAN. Do you have a prepared statement?

Mr. LEVI. No, I do not, sir.

The CHAIRMAN. Your biography is correct?

Mr. LEVI. Yes, it is.

The CHAIRMAN. It will be admitted into the record.

[The information referred to follows:]

Born: June 26, 1911, Chicago, Ill.

Legal Residence: Illinois.

Marital Status: Married, Wife-Kate; 3 sons.

Education: 1928–1932, University of Chicago Ph.B., honors; 1932–1935, University of Chicago Law School J.D., cum laude; and 1935–1936, Yale University Law School J.S.D. (1938).

Bar: 1936, Illinois.

Experience: 1936–1940, Assistant Professor of Law; 1945–1948, Associate Professor of Law; 1948–1950, Professor of Law; 1950–1953, Dean of Law School; 1962–1968, Provost; 1968 to present, President, University of Chicago; 1940, 1941, Special Assistant to Attorney General; 1942, 1944, Antitrust Division; 1943, War Division, U.S. Department of Justice; 1950, Chief Counsel, Antitrust Subcommittee, House Committee on the Judiciary; and 1966–1967 (intermittently) Consultant with Department of HEW, Chicago and Office of Education, Washington, D.C.

Office: University of Chicago, Chicago, Ill.

Home: 5855 University Avenue, Chicago, Ill.

The CHAIRMAN. Now, Doctor, have you ever practiced law?

Mr. LEVI. Well, I have only practiced law in the sense that I was in the Department of Justice for five years, and I was counsel in 1950 to conduct special hearings for the Cellar committee. I was in 1956, I think, Counsel for the Federation of Atomic Scientists in connection with the preparation of what later became the McMahon bill on Atomic Energy Control. I have not been in the private practice of law.

The CHAIRMAN. Senator McClellan?

Senator McCLELLAN. Thank you.

Do I understand that you have not practiced law except as Assistant Attorney General for a brief term?

Mr. LEVI. I think the answer is yes, although I forgot to say that, by appointment of the U.S. Supreme Court, I did argue two cases in the U.S. Supreme Court after I left the Department of Justice, and that one of the cases then had to be followed through the state and the Federal courts for some years thereafter. But I think the general direction of the question whether my experience as a practicing lawyer is essentially in the five years with the Department of Justice and in handling for the Cellar committee the particular investigations is correct. Of course, I was doing a lot of law teaching, also, but I think that is correct.

Senator McCLELLAN. You have not really engaged in the private practice of law?

Mr. LEVI. That is correct.

Senator McCLELLAN. Your experience as a practitioner has been with the Department of Justice and in one or two other instances representing some interest?

Mr. LEVI. That is correct.

Senator McCLELLAN. I have no other questions, Mr. Chairman.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Dr. Levi, it has been suggested by one of your sponsoring Senators that it would be well to remove the Department of Justice from partisan politics. How do you feel about that?

Mr. LEVI. I do not believe that the administration of justice should be a partisan matter in the sense that I do not think, and I assume we all agree, that cases should be brought to reward people or to punish them for partisan reasons. So in that sense I do think, and I assume everyone agrees, that the administration of justice is outside of that kind of partisan activity.

If it is meant that the Department of Justice is to be a separate institution unrelated to the governmental processes which govern the United States, and the relationships between the Executive and the Congress, and this committee, then I do not think it is possible to remove the Department from that kind of relationship, nor would I think in our system of government that it would be desirable.

Senator HRUSKA. Some people question the idea of saying that the Department of Justice should be taken out of partisan politics because of the connotation that is it is all right for the Department of Treasury to be in partisan politics, it is all right for the Department of Defense to be there, or Interior, or Health, Education, and Welfare, but not for the Department of Justice. What comment would you have on that?

Mr. LEVI. I think the only comment that I could make—and I think it applies perhaps in some degree to other departments—I think it would be a bad thing for the country to believe that the administration of justice was not even handed because it was in some way tilted by partisan politics; and it is the necessity of indicating and having the reality of an even handed approach which I think is what is intended by saying that it should be removed from partisan politics. I must say that this same kind of observation can be made about other departments, and I assume that the same kind of even handedness, appropriate conduct has to be demanded of them also.

Senator HRUSKA. Do you consider yourself a politician?

Mr. LEVI. Well, I suppose that a university president would not survive very long if he did not have some attributes of getting along with people of different views, respecting their views, and trying to work out appropriate answers and compromises. But I do not consider myself as political, or a politician in some other sense. I doubt very much whether I would have those qualifications. As I have said, I think it is important to work with people. It is important to understand the relationships between the Department and the Congress. After all, a system of justice is one in which there is a kind of representative function within it.

Senator HRUSKA. It has been said, and I do not know but what it is with some justification, that in order to avoid partisan politics within a department, it takes a politician to achieve that goal. There is basis for that in that virtually every decision that is made of policy within that department, as within other departments, has political connotations or implications one way or the other. One inexperienced in politics might make the mistake of misjudging or not being able to appreciate that type of impact and immediately he is attacked by those who are offended by such a decision as engaging in politics. It is quite a dilemma. What thoughts have you on that sort of a situation?

Mr. LEVI. Well, Senator, I think it is a valid point. I do not know whether it makes for a general principle. My belief is the habit of conferring and seeking advice and knowing what the objective ought to be, and trying to reach agreement might be sufficient to carry me through if I were confirmed and took this high office. But I certainly can understand the argument that it might be that it takes a politician to understand how to avoid partisan politics.

Senator HRUSKA. I have been asked, Dr. Levi, whether you are a Republican or Democrat, and I have been unable to answer that question. Can you answer it for us?

Mr. LEVI. Senator, I am not in any better position than you are on that. I cannot answer that question. I think there is no doubt that during the 1940's—and I do not know quite what end date to put to that—I would have been regarded, partly because I was in the Department of Justice, I guess, during that period, as a Democrat, but undoubtedly not only for that reason. But as to later years I find it difficult to know what to say. I do have very good friends in different parties, and having been in a position in the university where alumni, distinguished alumni have been in both parties, and where I have felt that it was inappropriate for me as a dean or a president to take a position because it would be misunderstood as an institutional position, I find myself now in a situation where I cannot—the truthful answer is that I do not know. I do not know.

Senator HRUSKA. How are you registered as a voter?

Mr. LEVI. I think the answer is that I am not registered in a primary.

Senator KENNEDY. May we ask why not? Would you yield just on that point?

Senator HRUSKA. Yes; for a brief question.

Senator KENNEDY. I just ask, why not?

Mr. LEVI. Well, I think the situation in Illinois is I could register at various times in various primaries. I think the fact of the matter is, although I would want to check this, but I think the fact of the matter

is that I have not in recent years and so far as the area in which I live, the Hyde Park-Kenwood area, the politics there is so complicated that I am not sure which primary I would be voting in. You can vote in either, I think. So I would not say it is a great matter of principle to me. I think what the fact is is for many years I have not done so.

Senator HRUSKA. You are a man of considerable intellectual attainment. If you find it difficult to determine how you are going to be voting in a primary, how would the average citizen be able to do it who has not been endowed with the academic and intellectual training and achievement that you have been able to accumulate?

Mr. LEVI. I accept the compliment, if that is what it is. I am not sure my attributes, as such, give me much greater wisdom in terms of the particular items which happen to be raised in the primaries which would have been involved. I don't mean to say that given a great issue which could be handled at the primary level I wouldn't take part, but I haven't.

Senator HRUSKA. We are considering from time to time legislation on wiretapping for various purposes, wiretapping by court warrant, warrantless wiretapping, wiretapping for intelligence purposes, either foreign intelligence or domestic intelligence when there is an overlap, and so on.

In your academic career you have had some experience with wiretapping, and I refer to the time that a foundation funded an exercise where jury-rooms were bugged and transcripts were made. When that became known, the legal fraternity became very exercized, because such an occurrence meant that the sacred precincts of the jury-room were invaded, and that was considered very wicked. It has some bad implications. The matter undoubtedly will be brought up by others. I give you now an opportunity to comment on your part in that and what its purpose was and what judgment you have on it now.

Mr. LEVI. Well, I am happy to comment on it. In 1953, I should say 1952, the University of Chicago announced that it was beginning a rather large research program which in general involved inquiry into the effectiveness of citizen participation in the administration of justice, and there were three areas which were selected, although they could have been changed, for that inquiry. One was the jury, the jury system. One was arbitration. And the third one, which was somewhat different, involving the creation of legislation and the interpretation of legislation by courts, was the extent to which the tax law seemed to reflect the attitudes of various segments of society.

Now, the biggest part of this research program was going to be on the jury. A statement was made as to the intentions of the Law School to investigate the operations of this most important American institution to see if it could be strengthened. When that statement was made in 1952, the Law School began receiving communications saying this project will not mean anything because it will be unreal, that we would not really know what went on in the jury-room. I think that the first statement of that kind came to us from Eugene Stanley, who was an eminent lawyer, I think president of the American Bar Association in Kansas, and then it was followed, amazingly enough, by a communication from Paul Kitch, who was Chairman of the Committee of the Wichita Bar Association who in effect said that he had discussed with the Federal judges in Wichita the possi-

bility of recording a number of jury deliberations under very special protection, and that he would be able to have the permission of the judges for this to be done, and if he could get this permission under safeguards, would we be willing to consider it? And correctly or not, we said, well if the judges are in favor of this or are sufficiently in favor of it, and if the safeguards are sufficient, we will consider it.

What happened was that Mr. Kitch came back with statements which indicated that the Federal district judge in Wichita, Kans. would approve and that there was—I do not say the approval—but the permission of the chief judge of that circuit, Orie Phillips, for the recording of a limited number of cases where the attorneys agreed, where the judge had complete jurisdiction over the recording, where the purpose was solely for the research, and where the tapes and transcripts would be so changed that no identification could be made, and only for a limited number of cases. And these recordings then were made in 1954, I believe, for five or six civil jury cases. I say five or six because two of them were related cases. There were two condemnation cases, there was a water seepage case, and so on.

As I say, this was with the permission and under the jurisdiction of the Federal judge who asked the attorneys in each case whether they agreed to this, and under other special precautions.

Now, the jury was not told, and that, of course, can be regarded as a fatal flaw in the experiment. Our hope was that taking this limited number of cases, five or six, that we would be able to show through statistical analysis that the kinds of discussions, the amount of time spent on issues, the amount of time spent on the instructions of the Judge were identical to experimental juries which we could then create, and which could then be used as a basis for a large part of the jury project.

As I say, the five or six recordings were made, they were masked, and under the jurisdictions the Federal judge. The Wichita Bar Association Committee there or the judger decided that they wished to play excerpts of these masked recordings to the Federal Judicial Conference, when the tenth circuit had its meeting in Estes Park in 1955. They came to me to ask me for my permission, and I said I was opposed to it, that the arrangement and agreement we had with the judges whose rules were all spelled out, were that these matters were to be kept confidential.

I was told, well, it is really not up to you because the Federal judges have jurisdiction over these tapes, and I said, well, that is correct, but I think it is an unfortunate thing to do. In any event, the tapes, in some modified form, were presented at this Tenth Judicial Circuit Conference, and then, of course, six, seven weeks later, it became public. And then there was a congressional hearing on it.

In the fall of 1955, Judge Hill, who was Federal district judge under whose jurisdiction this was done, wrote to the Law School and asked that all the tapes and transcripts and everything connected with it be returned to him, which of course was his right since these were always under the jurisdiction of the Federal court. All of them were returned to him. No use was made of these tapes in the subsequent jury project.

Senator Hruska. But they were played, were they not, and listened to by various members of the staff and notes made and some conclusions drawn from the recordings?

Mr. LEVI. I think, Senator, very little of that because we were really waiting for that kind of statistical analysis which might have given a basis for authenticating experimental juries, so that really, that part of the project was, I would have to say, a wasted part. It was the part which obviously created most tension, but was always at least so far as we are concerned to be a very small part of the project.

I would like to say, not in defense of myself, but in deference to the people who worked on the jury project and not particularly that part of the jury project, that the book which eventually appeared, entitled "The American Jury," written by Mr. Kalven and Mr. Zeisel and which uses different techniques, is regarded as a very great book. It has been frequently cited and quoted by the U.S. Supreme Court, so that I really do not want to disfigure the whole jury project by reference to this early segment of it.

Now, you have asked for my own attitude, and my own attitude is really quite simple. I think it was a mistake. Some of us know more today than we knew then.

I think that when one is dealing with a fundamental institution which relates to basic human rights, individual rights, particularly when one is dealing with something which can be as uncontrollable, if not carefully watched, as recording mechanisms, that it was a mistake to venture into this field; and I also have to say that, possibly because of old age, I have less confidence today probably in that kind of sociological research. In any event, that was a time when new statistical methods were assumed to be able to give us all kinds of answers, as to which I am doubtful today.

I would like to say that my saying it is a mistake does not mean it was a mistake, but you have asked for my attitude, and my attitude and my judgment are very clear. My view is that it was a mistake.

Senator HRUSKA. You say the jury did not know about this bugging, and you say that was a flaw. Why is it a flaw?

Mr. LEVI. Well, it is a flaw in the sense that one could say that this was a violation of the privacy of their deliberations, and I feel very deeply, and one reason I say it was a mistake, I would not want jurors to think that their free and open discussion in the future might be vulnerable to that kind of eavesdropping, so I think that was a fatal flaw.

Now, it is true that Judge Phillips first, when the project was presented to him, as I understand it, wanted the jury to be informed, and then he changed his view, at least to the extent of saying that he would not object to this being tried with a limited number of cases.

Of course, if the jury had been informed, then that part of the project would not have done what it was supposed to do, that is, it would still have been regarded as artificial, so I think that really meant that it should not have been done at all, and that it why I regard it as a mistake.

Senator HRUSKA. Would that make it right, that the lawyers and the judge approved it? Did that ever occur to the sponsors of the project?

Mr. LEVI. I think we have, at least I have, greater wisdom on it. I don't think it made it right. I do think it showed that there was an attempt to secure adequate protection, and as I said, I think it was a mistake.

Senator HRUSKA. The fact is that the two professors who participated in this project were members of your law school faculty, weren't they?

Mr. LEVI. Yes.

Senator HRUSKA. Suppose such a project were tried on a Cabinet meeting or on a staff meeting of a member of the Cabinet? Would that be a good experiment as to how the government business is done? The public does have a right to know. Would such a project be helpful?

Mr. LEVI. Well, I do not know whether it would be helpful or not, but I would be very much opposed to it, and as I've already indicated, I suppose that is another reason why I am opposed to what was done in 1954 in Witchita. That is why I've said it was a mistake.

On the other hand, I do want to emphasize that it was done for research purposes and under protections which I think now could not have been adequate, but there was an attempt to have adequate protection.

Senator HRUSKA. Last week there was filed a bill which embodies a modern Federal Criminal Code, totally revising the Federal Criminal Code as we know it today. It is a big bill. There are 753 printed pages.

Not all of the material is new although there are some innovations. Much of it, in fact, is a re-enactment of present criminal law—defining present criminal offenses in a more lucid manner, establishing some logic to the sentencing system and codifying law that is not in statutory form but is judge made.

Now, in an undertaking of this size, there are bound to be some differences of opinion and the committee will have to make a choice of one or another alternative. Despite the fact that a code is not going to satisfy everybody in all respects, what do you think of the need for such a code, and what would be your ideas on proceeding in that fashion in the field of criminal law?

Mr. LEVI. Well, I think such a code is highly desirable. I am on the Council of the American Law Institute, and I am familiar to some degree with the criminal code which was developed there. I understand what has been worked on here is somewhat the same, and in some instances it differs.

I think it extremely important to go ahead with this project and complete it. I understand that there may be some differences of view. I would think it inevitable.

As to some specific provisions, I have indicated that I would be glad to take up, if anybody desires to do that, such specific provisions where it is thought that further discussion with the Department of Justice and the committee might be useful, and I would be happy to take the lead if that is required in seeing that the discussions at least take place in the Department of Justice, but I would be very anxious to see that project completed.

Senator HRUSKA. We have received in the Subcommittee on Criminal Laws and Procedures the cooperation of your predecessors on this project, and without it we never would have been able to make the progress that we have made, and I acknowledge at this time the leadership of the chairman of that subcommittee, Senator McClellan, who has done some great work to get what progress we have had.

Dr. Levi, I enjoyed the opportunity to visit with you on a great number of subjects. I was pleased and impressed with your grasp of their scope and of their nature.

It had been repeatedly reported in the press and otherwise that Roman Hruska is opposing your nomination. That is not based on fact. There has never been any statement on my part that I intended to oppose you.

I did make inquiry into your record. I made inquiry of the Librarian to furnish me with some of your published works, and there are many of those and they are of high quality.

I want to say here, it is my intention to vote in this committee to report your nomination to the Senate for debate there and a vote on your confirmation. My present intent, unless something very dire and flagrant is introduced in this hearing, is to vote for your confirmation.

The lack of private practice on your part is sometimes pointed to. I shall complete my questioning at this point when I finish this brief statement, so that others can get to that matter. We had a situation 14 years ago in which another Attorney General had no private practice at all. He happened to be the brother of one of our distinguished members of this committee and a brother of the then President.

On January 21 of that year, 1961, I got up on the Senate floor and expressed my thoughts on that subject. They are the same today as they were then. Whatever the man's achievements were in that field—and his knowledge of the law was limited to the training he got in school and some experience in a legislative field, and that is all, as I recall it—my position was that it was for the President to appoint, and if the person had certain basic and fundamental attributes of honesty and integrity and good faith and good will and loyalty to the country and had the confidence of the President, the President was entitled to the approval of that candidate.

After all, there is a close relationship particularly between the Attorney General and the President, and it requires that kind of trust and confidence to make the system work.

I thought I would make this statement in order to make it clear that, with a number of members of the press here and a number of citizens as well as my colleagues here on the committee, my inquiry into your record and inquiries of you, even as here, were made in good faith and for good purpose.

Had I not made them, I think I would have been accused of being derelict in my duty to carefully examine a nominee of the President. So with those thoughts and with that spirit, I now desist from further questioning, although the lines of questioning are many, as you and I know because we have covered them well in our talks on those subjects.

I thank you, Mr. Chairman.

Senator PERCY. Mr. Chairman, because of Senator Hruska's comment on the remarks I made on the removal of the Justice Department from partisan politics, at some point, at whatever point the Chair would prefer, I would like to make a brief comment in clarification.

The CHAIRMAN. Senator Hart?

Senator HART. I, too, had a chance to visit with Dr. Levi.

The CHAIRMAN. Excuse me, Senator Hart.

Senator Percy, do you want to make a comment now?

Senator PERCY. I think I can do it very quickly. It might be appropriate, if Senator Hart would not mind.

Senator HART. Surely.

Senator PERCY. I do this simply because I understand there will be legislation introduced to divorce the Justice Department from the executive branch of Government and set it up as an independent agency; and I did have the privilege of working with Senator McClellan, as chairman of the Government Operations Committee, of which I am the ranking member, and we will handle such legislation of course, and because I did introduce a resolution in the Senate that we establish an independent special prosecutor's office, I would not want the inference made that I believe the Justice Department should be made independent of the executive branch. I, at this stage, do not feel that would be wise. I do not think an independent agency is needed. I think the Attorney General ought to be a part of the administration, the executive branch, and a part of the Cabinet, but I do feel that we can remove it from partisan politics because of the not necessarily exact conflict of interest that occurs when the Attorney General does engage in partisan politics, but the appearance of a conflict of interest, in antitrust cases particularly, and I need only refer to the fact that with at least two Attorneys General that I can think of administrations chose to file major antitrust suits against American corporations in the last days of the administration or that the Attorney General was in office as evidence of the fact that there was at least the appearance that partisan politics entered into the timing at least of those decisions.

I object strenuously when a member of my own party, John Mitchell, as we now learn, ran the re-election of the President committee while he was Attorney General. I felt it totally inappropriate. I must say I was not particularly concerned about Robert Kennedy not having practiced law, but I was concerned about his own deep political involvement with that of the President, and I felt that really at that time he should have made a choice as to whether to be Attorney General or whether to be a principal political advisor to the President, but those two roles should have been divorced.

I do feel that in the case of Dr. Levi, and we have never discussed the subject, I would hope that the precedent could be established now that as Attorney General, if confirmed by the Senate, he and the President would work out an understanding that he would not engage in partisan politics, he would not be expected to fund-raise—he has done enough of that for the University of Chicago that I have seen for 25 years—he ought to be relieved of that responsibility. He ought not to go to the chicken and peas dinners and take his time away, valuable time, for campaigning even during election years, even if he deeply feels that the reelection of an administration is involved.

I think he ought to establish the same precedent the Secretary of State and the Secretary of Defense have and this is a very good time to do it.

I was disappointed when I made my investigations of Dr. Levi and found that he was not a registered Republican and therefore had never voted for me in a primary but I presume Adlai Stevenson is just as disappointed that he never voted for him in a primary.

[Laughter.]

Senator PERCY. But understanding the nature of his job at the University of Chicago, the politics of Chicago, the deep involvement of Mayor Daley, and the need for the support of the mayor, as a trustee of

the university I am delighted that all through the years he stayed free of partisan politics and can rate as an independent about as clearly as anyone I have ever seen, and for that reason I feel he is uniquely now at this stage in our American political process to help, I hope—and I must be lobbying at this point—to help remove the Justice Department from partisan politics, once and for all, not by regulation or law, but simply by the same precedent that has governed the Secretary of State and the Department of Defense.

Senator HRUSKA. Did you say you intend to introduce a bill on the subject?

Senator PERCY. No, I did not. I think it can be done by a precedent. I do not think there is any legislation involving the Secretary of State or the Secretary of Defense. It is strong, established precedent, and I think the American people and the Congress of the United States would have a great deal to say about a Secretary of State that went out on the chicken and peas circuit, just as they would of a Secretary of Defense. It is totally inappropriate, and I think it is just as inappropriate for the Attorney General to engage in partisan politics of that kind, whatever party he may be a member of.

The CHAIRMAN. Senator Hart.

Senator HART. As I told you, Doctor, in our visit in my office last week, I too anticipate and rather welcome the opportunity to vote favorably on your nomination.

For me, I think Senator Hruska's confidence in Bob Kennedy, and Senator Percy's reservations in John Mitchell, in the light of history are resolved to the credit of both Senators.

I think that the Justice Department under Bob Kennedy, who associated people like Byron White, Nick Katzenbach, Jack Miller, Burt Marshall, and many others, in key posts, provided a very high standard for future administrations.

It is too bad that the last administration did not know it.

On that highly partisan note, let me return to this business of did you ever vote. Do you vote? Do you recommend that people participate in politics?

Mr. LEVI. Yes, I do vote. I think the question is have I registered and voted in a primary, have I voted in that kind of a primary which requires me to declare myself as a Democrat or Republican or whatever, and I really am saying that to the best of my recollection for many, many years, I have not done so, although it is quite possible that I may have slipped and decided that one of my friends, and they're all very good people, needed by support. My belief is that people who have been running did not need my support in the primaries, and that they were on both sides, and I couldn't vote in both primaries. Now I'm not sure about whether the law has been changed, so that in Illinois I think one can switch back and forth, but it is a matter of fact that I have not been doing that so far as I know.

Senator HART. Did you ever register as to party?

Mr. LEVI. I am sure that, I say this without having the actual facts, but I would believe that in the 1940's I probably voted in a Democratic primary, but between 1940 and 1945 I was here, in 1946 I was terribly busy, so that I'm not absolutely certain, but I would think it is likely.

Senator HART. That is a lousy track record from the viewpoint of those who feel strongly that the major parties need constant infusion of the best.

Mr. LEVI. It may be, but I cannot change history.

Senator HART. No.

To what extent was fear of retribution against the University of Chicago a factor?

Mr. LEVI. I do not think that is the way to put it because obviously so far as my own voting is concerned, I don't see why there would be any retribution. Moreover, I do not think it is a question of retribution anyway. I did early discover when I was dean of the law school that a great many of my friends for whom I had great admiration were running for political office, and on both sides, and very early I was asked if I would give an endorsement, now that is a different point, give an endorsement to one person who was running for high office on the Democratic side and another person who was running for a judgeship and for whom I had high regard on the Republican side. And I said to them, I do not really think you want my name. I think you want the title, and I think it is a misuse of the title because it seems to somehow identify the University of Chicago Law School. If you want my name and omit the title, you can have my name, but don't use the title. They both agreed. They both ran ads, undoubtedly prepared by their staffs. The ads had the title.

I felt this was sufficiently likely to occur, and it did lead to misconceptions as to the position of the institution, and since I think that institutional neutrality on such matters so important, that is the reason I adoped the course I did. It was not fear of retribution. As a matter of fact, I have lived through periods when it was all the other way around. I had to continually defend myself against some students and some faculty for appearing to be so wishy-washy that I had no views and that I had restrained myself from expressions because I was afraid that it would be committing the University of Chicago which has in it, obviously, faculty who have very different views, and it was to protect that essential neutrality of the university that I adopted the course I have.

Senator HART. Well, I shan't pursue it much further, but my question did not go to endorsing people. It went to participating in primary elections.

Mr. LEVI. I understand that point, and I have to confess to my sins, if they are, because I'm trying to describe what I recall the facts to be.

Senator HART. I apppreciated the explanation you gave to Senator Hruska's question with respect to the eavesdropping or wiretapping of the jury room in the civil cases, and it is a lesson all of us should remember, that the time, the specific frame during which a person speaks or writes should be understood before judgments are passed at any particular moment in history.

We have all learned a lot in the past 20 years and in hindsight, I guess everybody would agree that what occurred ought not to have occurred, but it occurred in an atmosphere and with a lack of understanding. Perhaps that could explain it. You can work that one both ways, but it does bear on the most sensitive of current concerns, and that is government surveillance, and if I can ask a terribly open-ended question, could you give us your general views on governmental surveillance?

Mr. LEVI. Well, my general view is that governmental surveillance, as I understand it, is required in connection with certain areas. One area is the detection of crime or an area where there is probable cause

to believe that a crime is likely to be committed. And another area is in connection with the collection of information with respect to appointments to governmental positions. Then there is, I guess one can say it is a third area which deals with matters relating to very delicate foreign security matters.

My attitude is one has to be very careful about the surveillance in these categories. There are very important principles, however, on both sides which need to be understood and observed. It is important to have surveillance where there is probable cause that a crime may be committed and may be prevented.

It undoubtedly is important that there be adequate surveillance in connection with some foreign operations which affect the security of the United States. These conflicting social policies have to be worked out, and I must say that to the extent it is possible I think they ought to be discussed. I do not think they can be discussed in specific detail always but certainly in terms of general guidelines I think they should be discussed.

Moreover, I think it is important, and really, to a considerable extent the Congress has recognized this, certain kinds of surveillance at least have to be—of which I consider wiretapping one—have to be cloaked with very important safeguards so that it is clear that this is an unusual operation and one deemed necessary under the circumstances, and because the Federal statute prescribes the course which should be followed, and I think it is extremely important that that course be followed.

Now if the question goes beyond that as to what one does in that national security area which involves foreign counterparts of some kind or another, I do not know that I can say that I think that a judicial warrant need be required.

And I might add I have asked myself. I think it is early to ask myself some of these questions because I really do not have the detailed information, but I would not think that the judicial warrant itself would be adequate protection in any event. It does seem to me that it is important that there be procedures within the Federal Government which examine very carefully whenever it is considered necessary to have that kind of surveillance.

Now I do not know, Senator, since this was an open-ended question, whether I should go on to other aspects of it, but this reflects my general view.

Senator HART. I think your answer to an admittedly open-ended question was excellent and I think, very quickly, based upon that broad proposition that you have given us, I can raise with you some specifics without unduly delaying my colleagues on the committee.

You suggest three general categories. Clearly there can be further labels or categories established. But when we talk about surveillance as a general term, we are lumping together, as you pointed out, several separate issues.

First, for example, when should you open a file or store information on someone when it is not done in direct connection with either a criminal investigation or a background check? You indicated that there should be some very clear guidelines and it has been suggested that probably they should be the subject of public discussion and the public be aware of them.

Mr. Levi. Well, I think to some extent they can. As I said, when one tries to draft them I rather suspect that certain specifics may be very difficult to place.

Senator Hart. I understand but what are your general thoughts, not now as to the guidelines but what are your general thoughts about the potential danger of maintaining files, retrievable index information on someone when there is not a pending background check or a specific criminal investigation?

Mr. Levi. Well, there are obvious problems and this committee has wrestled with some of them, and I think they have to be broken down and looked at more specifically.

One question is, I suppose, what happens if unsought for information comes to the Department of Justice or the Federal Bureau of Investigation? Is that put into a file or discharded or somehow separated?

Another question relates to, since I do not know how we are using the word file. Members of Congress and others may write to the Department of Justice and their letters go into what is called a file, so that you get all kinds of files, and I do not know what the situation is. I should say the notion that people in the United States are being generally watched, if that is the notion, and under surveillance, is obviously not a good notion, and the notion that the watching is in some way either now or in the past has been related to political matters as a part of, as I say, rewarding one's friends or hurting one's enemies or whatever, well that, of course, is completely contrary, as I understand it, to the standards of the Bureau itself and of what all of us would be for.

And I would hope that the guidelines, if guidelines can be developed, will put to rest some of these fears not only by stating what ought to be the goals but by some assurance that they will be carried out, and specifically in the area dealing with that kind of surveillance over the Members of the Congress.

If I were confirmed as Attorney General I would regard it as my duty to attempt to work out such guidelines with the Director of the Bureau and working with the members of this committee and particularly with the Oversight Committee on the Federal Bureau of Investigation. I do not think that would be easy to do but I think the attempt is very important and I would assume that responsibility.

Senator Hart. Well, I certainly welcome your explicit assertion that the development of the guidelines, difficult though it may be, should be done in conjunction with Congress and not left to the discretion or the judgment of the enforcing agent or agency.

Mr. Levi. The only reason I have stated it as I have is that I did not want it to appear that I was merely saying, well, this is your problem, which, indeed, in many ways it is.

If I am confirmed as Attorney General I will recognize it as an obligation to prepare in consultation with the Director such guidelines and others as I can but obviously in consultation with the Congress and this committee. And what will happen then whether the guidelines will show that the attempt can't be made successfully and so on I do not know. The only way that I find out about that is to do the best I can and to present it to you.

Senator Hart. And whether we succeed, included in our effort should be to make clear that merely because somebody or some group of peo-

ple have the potential for doing harm, acting illegally, that that in itself is no justification for either taking their picture or putting an agent in their midst, because all of us have the potential for doing wrong and the temptation for the policeman is to make sure he is a good cop by tailing everybody just in case we do and then he is there.

Mr. LEVI. Well, Senator, you have put your finger on a very serious problem and that is the probable cause, the likelihood of a crime being committed point. And I suspect that is a very difficult area. If crimes are committed and there is a complete absence of the kind of knowledge which one perhaps might have thought would have been available, then there can be great criticism.

And so I think there has to be a weighing of these very, very great social policies and needs, and I would hope that the guidelines would deal with them. As I have said, I assume the surveillance is in terms of the probable cause that a crime may be committed. Now more informed people or less informed people will have different views as to what that means, and this will be one of the problems for the guidelines.

Senator HART. I was not clear as to your comment as to the need for a third party presentation to a magistrate for approval before a tap can go on, somebody involved in national security threats, or did it relate to foreign citizens?

Mr. LEVI. What I meant to say is I think some top official in the government should be assigned the duty of reviewing this intended action quite apart from whether one decides whether one goes to a judge or not. I really myself do not believe that going to a judge for permission is in itself that much protection. So that whether one decides to do that or not, and I think that really is essentially up to this committee and the Congress, I think it does take a responsible Government official who knows this is an unusual act and takes it seriously.

The CHAIRMAN. When Senator Hart concludes we will recess until 2 p.m.

Senator HART [presiding]. I will be only a few more minutes.

The need for a top official, and the Attorney General would be such a person, to make a determination as to the priority of such conduct, I think everybody would agree with the need for that, but whether in your judgment it would be particularly useful or not, why in heaven's name isn't it also essential that after the top official has decided that we should tap, that you do go to a magistrate? Let us exclude for a moment the situation of a foreign agent. I am talking about an American citizen and a claim of national security.

Mr. LEVI. Well, if you are talking about an American citizen without foreign arrangements, then I think that under the present law that would require going to a Federal judge.

Senator HART. Yes, but that is the leak that gets us in trouble all the time—"with foreign arrangements." Why should we in that case say the top executive, the Attorney General, can make the judgment? Why isn't it essential that the magistrate himself make the judgment?

Mr. LEVI. Because I assume that really that gets you into the question of what you would do in the case where it is just the foreign arrangement that you are looking at. And I think you have to make a judgment as to what you are going to do there and compare the two

situations, and I do not at this point know what my answer would be on that.

Senator HART. Well, we have seen how easy it is once you convince yourself that there may be a foreign connection and in defense of national security to engage in action which is abusive.

What do you think—let me put it this way—what do you think the Founding Fathers had in mind when they wrote that fourth amendment specifically as to whether the magistrate should be interposed between the agents of the Executive and the citizens whom the amendment was intended to protect from unreasonable search?

Mr. LEVI. Well, I cannot give you an answer as to what they thought in terms of foreign agents, and I think that is what we are talking about.

Senator HART. We do not know the way it may be defined. Some top executive may feel it in his bones.

Mr. LEVI. I think what we are discussing, Senator, is really not my attitude but the implementation of it and the dangers which you see in it. I think it has to be strictly limited and needed. And I think what you are saying is, well, it may start that way but the erosion is very easy because it is very easy to assume that someone is a foreign agent.

I think this is a problem that has to be worked out, and I would welcome, as others have said in this position, guidelines on this point. I think we do need protection here and I think we need protection for two reasons, first, because if you— that is, protection against the undue use of such surveillance—first, because if you use it it is likely to spread over into other areas. Therefore, you want to be extraordinarily careful that that does not happen. And the second is because I am afraid there is a general belief in the United States that this use is exceedingly widespread. Now I am not informed. I am told it is not widespread. But I think the American public has a right to be reassured both on the kinds of restrictions that are imposed so it does not spill over, and second, on the question of its frequency.

Senator HART. When we talk about guidelines, if I was a participant in attempting to draft them I think I would have an awful hangup here because it seems to me that the fundamental purpose of the fourth amendment cannot be served if the President or the Attorney General or somebody else at the highest level judges his own case as to whether there is or is not a foreign connection.

Mr. LEVI. Senator, on that—and I do not like to be in a position of, or maybe I should be, of tossing the question back to Congress—the fact that there is a constitutional reservation of authority in the President does not mean that Congress could not spell out in more detail what it thought the appropriate procedures should be. And I think it would be helpful if that were done but it has not been done. I could say, let's go to a judge.

Senator HART. That's fair enough, that's fair enough. But if I were going down to that Justice Department, or if some of my colleagues on this committee were going down, I think we would understand the law to be this: we're talking about an American citizen and he just came back from Hanoi a couple of years ago after a visit. Who paid for it? What was his purpose? Why did he go? Surely there must be a foreign connection. We want to find out whether he is acting as a foreign agent so we tap to find out.

Now you shake your head as though——

Mr. LEVI. Well, my belief is that guidelines can take care of situations like that. I think they can state presumptions, they can give directions. And I go back to the point that if we are going to a judge in the District of Columbia, if it is supposed to be the way of protecting that kind of surveillance, I don't really think it will be much protection. I do not say I am against it. I say that at this juncture in my career, and without taking the kind of advice that I think I should take, I do not want to give a commitment or a final opinion, it would just be quite contrary to what I think is appropriate or how I feel about it.

Senator HART. As between a guideline that has to anticipate in advance a whole variety of citizens who travel abroad under circumstances that offend the authorities, and a specific individual, it would seem to me more likely that you would get the benefit of the fourth amendment as to the citizen if that specific situation was presented to the magistrate or the district judge rather than relying on a guideline that had been written 18 months before.

Mr. LEVI. It may very well be the best wisdom on it would be presentation to a high government official who took time to understand why this was being suggested, and then also permission from a Federal judge. But I do think that there are people who have worried and have worked on this problem for a long time within the Department of Justice, and I have not talked to them, and in deference to that I think I ought to seek their advice before I come up with my views which may or may not be erroneous.

Senator HART. To turn for a minute to the Office of the Special Prosecutor and specifically to his charter as it has come to be called, I think for the record it would be well to ask for your commitment, as Elliot Richardson and Attorney General Saxbe gave us theirs, to protect and preserve the independence, the full independence, of the Special Prosecutor under the terms of his charter while his office completes the tasks intrusted to it.

Mr. LEVI. You have it.

Senator HART. The charter speaks of the duration of the Special Prosecutor's Office. It says that it shall continue, the Special Prosecutor's Office shall continue either until the Special Prosecutor concludes that his job is finished or the Special Prosecutor and Attorney General agree on a termination date. The exact words, and it is the last section of that charter, the last section reads:

> Duration of Assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

Now do you understand that this means that as long as the charter is in force, if you and whoever may be the Special Prosecutor disagree on the need to continue his Office, you would defer to his judgment?

Mr. LEVI. Well, I do not know whether it means that. I'm always interested in ambiguous language. But I would interpret it that way.

Senator HART. Now that didn't sound so damned ambiguous to me. It says the Special Prosecutor will carry out these responsibilities until, in his judgment, that he has finished them or the Attorney General and he agree to close it up.

Mr. LEVI. I think the problem that bothers me is that it may very well be that the Special Prosecutor may at some point get rather tired of continuing his endeavors, and it is conceivable that some Attorney General might feel it is very important that he continue or that he have a successor, even though he did not think so.

Senator HART. That, frankly, had not occurred to me.

Mr. LEVI. Well, it has occurred to me and I have worried about it because I think it's very important.

Senator HART. I'm afraid, except that—well, you're right, it is—but except for persuasion I think the way we have written this thing is he can walk out any time he wants announcing he is finished.

Mr. LEVI. I think it's very important that he not do that.

Senator HART. Well, it is comforting to know that you will seek to persuade him to keep going or then come to us and ask us for advice and counsel.

The chairman indicated he wanted to recess when I concluded. I have some antitrust questions. I anticipated stepping aside to allow others to go along with their questions and then later in the day to come back to the antitrust things.

Senator HRUSKA. I understood the chairman to say that upon your conclusion, not termination but your conclusion, we would recess until 2 p.m.

Senator HART. All right. With that understanding I am protected on the anti-trust questions and we will recess until 2 p.m.

[Whereupon, at 12:12 p.m., the committee recessed, to reconvene at 2 p.m. of the same day.]

AFTERNOON SESSION

Senator ABOUREZK [presiding]. Mr. Levi, the chairman is sitting over here.

Senator Eastland will be a little bit late and according to the rules of seniority, there is no other member here except one on the minority side. I have been asked to open this meeting.

Senator PERCY. Mr. Chairman, might I say you are the shortest lived chairman we have ever had with Senator Byrd walking in now.

Senator ABOUREZK. I was going to say that I believed in the seniority system until just now. [Laughter.]

Senator BYRD [presiding]. Dr. Levi, what means are generally available to insulate Justice Department officials from conflicts of interest inherent in their dual capacity as appointees of the President and part of an elected administration team, on the one hand, and prosecutors bound to investigate crimes in their own election campaigns or crimes committed by high officers in the executive branch, on the other?

Mr. LEVI. Well, I suppose the primary basis for insulating personnel from improper conduct has to be their own moral conscience and the collective morality of the Department of Justice.

Beyond that, of course, we have examples of improper conduct very much in our minds and before us, and there are of course violations of law which would be disclosed.

But in terms of the general operations of the Department and the investigation of campaign-election violations, I would think one could rely on a proper Department of Justice. I know it has been suggested that there be some kind of a special prosector for that. There can be

a special office for that in the Department. I personally do not think it is necessary to create outside the Department a special prosecutor. I would be sorry if that were the considered judgment as to the nature of the Department of Justice.

Senator BYRD. What you are saying, then, is that there is no structural means presently in place to insulate, to provide such insulation, and that the only guarantee for such insulation is the sense of morality of the Attorney General and the people in the Justice Department?

Mr. LEVI. I said I thought that was the ultimate thing that will count, but of course there will be the reationships with the congressional committees, which will be very close on this. I am speaking somewhat from ignorance, or a great deal from ignorance, because I am not sure to what extent the separate office would be created in the Department of Justice, and it may well be that experience will show that one has to move outside the Department for that. But I suppose I am reflecting a desire not to create special prosecutors all over the place, and I would hope that the Department of Justice would rise to this responsibility. I would be loath to thing that it could not.

Senator BYRD. Does the fact that the only significant campaign financing cases filed by the Government in the last 40 years have been those brought by the special prosecutor's office indicate to you that there is this lack of insulation, and that this built-in conflict is debilitating with respect to the enforcement of certain criminal law?

Mr. LEVI. Well, I do not know what it means, but I do not think the Department of Justice is being politicized in the sense in which that description would suggest that it is, and if it is politicized to that extent, that ought to be changed, and I would rather do that than move to create, every time anything comes up of a somewhat sensitive nature of that sort, a special prosecutor.

I think ultimately there are two ways to do it. One is that there is congressional oversight, which there ought to be, and second, there is a morality of appropriate Department of Justice behavior, and this has been a great Department over long periods of history, and I don't want to accept the idea that it political in that sense—that is, partisan sense—and incapable of enforcing laws, whether they involve political matters or not.

Senator BYRD. I would take it by your statement that you would not be in favor of institutionalizing then, the special prosecutor's office, but you would proceed on an ad hoc basis if and when the apparent situation arises, as it did in Watergate, to have a special prosecutor?

Mr. LEVI. Well, we have had the necessity for a special prosecutor of that kind, not frequently in our history, and when the occasion has arisen, we have handled it. I suppose these occasions may arise again, but I would hate to think—although I know suggestions have been made—that one would have the Department of Justice on the one hand, and on the outside a continuing special prosecutor for all the kinds of sensitive political matters, which for some reason or other the Department of Justice cannot handle. It may be necessary, particularly in election laws, it might turn out there is a necessity for a continuing prosecutor. I am not willing to make that judgment now, and I hope it is not necessary.

Senator BYRD. Dr. Levi, I will yield at this time to Senator Kennedy, who is my senior colleague on the committee, and I will perhaps have further questions later.

Senator KENNEDY [presiding]. Thank you very much.

I want to join others in extending a word of congratulations to you, Mr. Levi, on your appointment and on the expression of confidence placed in you by the President. I also want to echo the supportive sentiments which have been expressed here today and to you for the chance to talk with you informally, prior to this hearing on some of the particular areas of interest which I have had.

I would like to, if I could, perhaps go back to one of the topics discussed earlier this morning, and that is the independence of the Attorney General and your view of that independence.

As we have seen in recent times, this independence has been tested and infringed. We have even heard from the present Attorney General about contacts made with him on behalf of the former President, which he rebuffed. Mr. Saxbe was asked for special consideration from officials at the White House, and I am just wondering if you could tell us what your reaction would be if you get a call for some kind of action from the White House. What is going to be your response? Are you going to call each case on the basis of the legality of the situation, or are you going to try to look for justification in support of action taken by the White House? Are you going to call them as you see them, so to speak?

Mr. LEVI. Well, I'm going to call them as I see them. I cannot imagine why anyone, including the President of the United States, would think of asking me to take this office, if I am confirmed, except for my independent judgment as to the legality, which includes frequently a judgment as to the kinds of policies which are involved in the legality, and I would give my independent judgment.

Senator KENNEDY. Would this be the same if a call came from a Member of Congress as well?

Mr. LEVI. Well, the answer has to be yes. I don't really care where the call comes from. I think that one has to believe in the advantage of discussion and reasoning, and most of my life has indicated that there is a great possibility to reason with others, so I think I will try to proceed through explanation and discussion, but ultimately I do not feel any reason to give into pressure of any kind. I really have to ask myself, why should I?

Senator KENNEDY. Well, it is extraordinary. That we even have to pursue this line of questioning, but this committee, over the period of the last several years, has pressed this issue and not only to our disbelief, but also to the disbelief of the American people, we find that interference has in fact occurred, where Presidents have called and have urged either action or no action in particular matters.

The clearest example was the ITT antitrust case involving Mr. Kleindienst, and there have been other incidents as well, so it is not something that is completely out of the realm of plausibility. Although I am sure everyone of us would hope and expect this would not recur. I hope you will understand the reasons for the questions.

Have you given any thought to the types of people you might bring into the Department in your attempt to show either a nonpartisan

attitude or a partisan attitude? Have you thought about reaching out to people who might be considered to be independent or even to have Democratic Party affiliation for positions of high trust and responsibility within the Department? You are entering the Justice Department after a period where it has been politicized; you could give not only what I am sure is your own personal commitment that political implications and political influence would not be tolerated, you could also give the appearance at least to the American people that you are reaching out to the different segments of our society in your appointment. Have you thought about that?

Mr. LEVI. Well, I certainly have thought about it. I have not felt—it is somewhat premature for me to assume I was in a position to do anything about it.

I think it is extremely important, and really, if I have much to offer to the Department of Justice, it would be along that line, I should think, extremely important to attract the best possible people, and this I intend to try to do.

Now, I am perfectly well aware that at some levels this would require confirmation by the Congress and this committee's involvement, and again I am perfectly willing to discuss prior to that and in terms of other appointments, such plans as I would have.

I have no commitments, and I must say my desire as well as my fear—my desire is to get the best possible people, and my fear is that this might not be so easy to do, but certainly my efforts will be put in that direction.

Senator KENNEDY. Well, are you going to, for example, submit your recommendations to the White House for approval?

Mr. LEVI. I do not know how that works. I am perfectly willing to tell the White House what ideas I have, that is, what people I have in mind, if they are at that level.

Senator KENNEDY. I think that is the question, who is going to make that decision, you or the President?

Mr. LEVI. Well, I assume, Senator Kennedy, that I am going to make the decision. I may be wrong, but certainly I cannot understand why I would be brought into this position on any other basis.

Now, as I said, I certainly think that there ought to be discussion and that there ought to be—I do not intend to bring in a group which in some ways or other is considered biased or something of that sort. I want to get a very able group of attorneys in the Department of Justice. I do not mean to say that there is not an able group there now, and in times past there has been an extraordinary group, and this would be my hope.

Senator KENNEDY. Well, if there is interference—do I gather you would tolerate that or you would not accept that?

Mr. LEVI. Well, if there were really, really serious interference, so that I thought it was injuring the objectives which you and I have just discussed, the two objectives of having an effective impartial administration of justice, the objective which is equally important, I think, of the appearance, because I think that cynicism about that in the country is a very bad thing. If I thought that there was a serious impairment of that, I would resign.

Senator KENNEDY. I wonder, why do you think you should have to send over your list to the White House? Say somebody calls up from

the White House after you are confirmed and says, send it over. Would you have any reluctance in saying, well, I think I'm supposed to call the shots over here, so I'm going to get the best people I possibly can. I appreciate this call, but I'm going to get the people I think are best. Would there be any reason—would you have any reluctance in——

Mr. LEVI. I would not have any reluctance in saying that except that really I am in a position where I would really like to get recommendations from many different sources, and I am not prejudging that those are not going to be good recommendations.

Senator KENNEDY. Well, when you have made the decision, obviously you are going to get them. I'm not asking whether you can or can't or should or shouldn't take recommendations, but would there be any reason that after you have made the final judgment you would feel that you have to submit that judgment to the White House?

Mr. LEVI. Well, if the person I have in mind requires confirmation, it might be important to get some expert judgment, to have some prior consultation.

Senator KENNEDY. About what sort of thing? What would you have to consult with them about?

Mr. LEVI. Well, I am not sure that for an Assistant Attorney General, for example, where I can make a recommendation, but where it is a Presidential appointment, and where it requires a confirmation and involvement of this committee, I do not think that I can really proceed as though all of those things were not the case.

Senator KENNEDY. Would it be just limited then to those who are Presidential appointments?

Mr. LEVI. Well, I would think that, I would think that they are in a special category, and I would think that beyond that, it would be a case of my trying to find the best possible people and taking suggestions in consultation both with this committee and the White House, but finally making the decision on the grounds of the ability, and fairness, and ideals of the person involved.

Senator KENNEDY. As I understand your answer then, political affiliation will be irrelevant so far as your determination?

Mr. LEVI. Irrelevant so far as I'm concerned.

Senator KENNEDY. We will be running into a time problem here. I appreciate very much the courtesy of the Senator from West Virginia in yielding. I have a number of questions but in fairness to my colleagues, and all of us are going to be voting again at 3 o'clock, if I could take another 6 or 7 minutes now I would like to come back if that is agreeable with the Chair.

The CHAIRMAN [presiding]. That's fine.

Senator KENNEDY. I do not know, Mr. Levi, whether you are familiar with the efforts made by former Attorney General Richardson for instituting the procedure governing ex parte contacts with the Justice Department by any party other than the party involved in the litigation or his attorney.

As I understand it, he set up a procedure by which any contacts would be recorded and a memorandum would be put in the file. I am wondering whether you are familiar with any of those procedures? What is your reaction to them? Do you think it would be a good idea to have some similar kind of procedure in your Justice Department, or what is your general reaction to that type of effort started by the Attorney General Richardson?

Mr. LEVI. Well, I have heard comment on some of the suggested procedures. I have not actually seen them written out. It seems to me good practice to have a memorandum indicate the nature of a call in any event. I have to confess, Senator Kennedy, that I am not sure how much one can really rely on these automatic devices which themselves would then have to be policed. That is, I say I would assume that it is good practice normally to be followed that calls which come in, contacts of that sort which are made are written down.

I am a little troubled and have wondered about contacts which are informal and occur at receptions and where it is not clear perhaps quite what the nature of the discussion is, as might be involved in the new consent decree statute which was passed. But I think, as we move into observing that and enforcing it, we will find out how to relate to that, so I am not against the Elliot Richardson kind of idea, except that I would think that all calls relating to existing orders and cases that some kind of memorandum would normally be written.

Senator KENNEDY. I beg your pardon. I did not get the last three words.

Mr. LEVI. I said I thought that all such calls would normally be—the recipient of them would write a memorandum.

Senator KENNEDY. Of course, Mr. Levi, that has not been the case in recent times, as we saw again, particularly in the events leading to settlement of the ITT case.

I am obviously sensitive to the problems which you have outlined here—efficiency and additional burden that might be placed upon those who would be in charge of a given case. But also I think that Mr. Richardson was concerned about undue or unreasonable or improper influence in particular cases, and I am wondering whether you think those interests can be balanced in a way which Mr. Richardson was attempting to do in the Justice Department, or whether you think for the reasons you have outlined that even though the objectives are desirable, you would not consider developing or continuing guidelines or procedures or practices which would reflect that?

Mr. LEVI. Well, in view of the prior history, or at least what is thought about prior history, I am sure that the practice of recording such conversations in a memorandum is desirable, and I am sure that that should be implemented in such a way, in some way. I think it is awfully easy to write a self-serving memorandum, and all I'm doing here is expressing some doubts as to how effective devices of that sort are going to be, but I am quite sure that there should be a memorandum.

Senator KENNEDY. Would you take a look, at least, at the work that was done by Mr. Richardson when you get down there, and give us some reaction to those, about the guidelines that you think would be useful, or the ones which would not be?

Mr. LEVI. Surely.

Senator KENNEDY. It seems to me that even given the observation that you have made about the additional burden and self-serving memoranda, I suppose this requirement would also have the effect of perhaps discouraging people from making improper calls if they at least had some knowledge that there was going to be such a memorandum made. I don't think that that is an inconsequential advantage in such procedure.

Mr. LEVI. I agree with that.

Senator KENNEDY. Moving over to wiretapping and electronic surveillance, I understand that you touched upon this this morning. I would like to get back to it if I could.

You are aware that President Johnson issued an Executive order, which is still in effect, requiring that all warrantless wiretaps be approved in advance by the Attorney General. Do you agree that that is an important requirement that should be enforced?

Mr. LEVI. Yes, I do, and there was a discussion this morning with Senator Hart, in which I gather perhaps I did not make myself clear, because the discussion was as to whether I thought that it would be better to have approval by a judge in this area. What I was trying to say was that I did not know whether it would be better or not to have approval by a judge. I think that has to be thought through, but in any event I think a responsible Government official taking the matter seriously has to give prior approval in accordance with that kind of procedure whether or not a judge approves so I do agree with that.

Senator KENNEDY. And I think in response to a question by Senator Hart you indicated a desirability to talk to some of those in the Department who have been working in this area. But I would be interested in whether you personally believe that there is any justification for warrantless wiretapping?

Mr. LEVI. The question is whether, where there is some foreign, some genuine foreign involvement, there is a necessity for warrantless wiretapping.

Senator KENNEDY. Well, let me—if I can give you just a little bit more—I think the *Keith* case has established at least the test on this. Mr. Saxbe, in response to questions at our hearing on this, indicated that he would approve warrantless taps only if activity was organized financed, and directed by a foreign power or organization.

I want you to give your own view. I am not asking where the Justice Department would come out, what you might work out after having a chance to talk and work out an agency position. I am interested in your personal view.

Mr. LEVI. Well, that is my personal view. I have to note that in the past persons in my position have been educated to a different view, but if you ask for my view at the moment, that is my view.

Senator HART. Would the Senator yield there?

Senator KENNEDY. Yes.

Senator HART. You could help us, Dr. Levi, by responding to this. You sought to clarify Senator Kennedy's question by saying that if there was some genuine foreign involvement, assuming that there is a genuine foreign involvement, is there a necessity for warrantless wiretapping? But until a court makes a decision that there is a genuine foreign involvement, why should anybody be allowed to tap?

Mr. LEVI. I understand the problem. I think the question sometimes opens up the consideration as to whether the nature of the foreign involvement is such that it is desirable to disclose this to a judge. But you have asked for my personal view. I think it can be done. I think it would be approved. I think before it is done there had better be responsible and determined consideration of it ahead of time before the judge decides.

Senator KENNEDY. Do I gather from your response that you have no objection to wiretapping under certain circumstances, or let me ask what is your position on wiretapping?

Mr. LEVI. Well, I think wiretapping is an unusual device to be used with great care and not as a matter of course, and that the reason for it has to be very clear, the reason why other methods are insufficient has to be clear, and this really is the direction taken by the statute and I think the statute ought to be observed.

Senator KENNEDY. Well, do you think that there are any circumstances under which you should permit wiretapping without a court order or court approval?

Mr. LEVI. And now this is where there is foreign involvement or where there is not?

Senator KENNEDY. Take it with the foreign involvement.

Mr. LEVI. As I have said, I cannot say that I have come to a firm conclusion as to whether a court order should be required for all wiretaps. That is really what you are asking me, including the foreign involvement ones.

I was asked for my personal opinion at this moment and I said I did not see the objection. I think it would work, I do not know how much help it would be but I think it would work if one had to get the approval of a judge. I have also said that if I am confirmed, I will discuss this matter with the people in the Department of Justice. I have to leave open the possibility that their arguments may be so persuasive and my ignorance so great at the moment that they would change my mind. But my view at the moment is that I would not see why it would not be possible to require the judge's approval.

Now I do want to make this point, that that is not the position which this committee has taken in terms of legislation. At least the Congress has not taken that position. And I really think that is something that I would have to take into account also.

Senator KENNEDY. As you are probably aware, there are two subcommittees of this committee that went into this whole area in some detail last year, Senator Ervin's subcommittee, and the Administrative Practice Subcommittee along with a special subcommittee of the Foreign Relations Committee because of the foreign policy implications. There are still some outstanding requests of Senator Ervin's and Senator Muskie's and our own in this area, and there are a number of pieces of legislation dealing with this very matter along the lines that you have just outlined in response to members of this committee. We are hopeful that there is going to be action on that legislation. So it is of interest to obtain your view on it.

I do not know how you want to proceed, Mr. Chairman. I have had some 20 or 25 minutes. There are others here.

We are going to have to break at 3 p.m. Senator Byrd was kind enough to yield to me. There are a number of things that I would like to pursue but I will be glad to yield. I will yield back to Senator Byrd.

The CHAIRMAN. We will rotate.

Senator KENNEDY. All right.

Senator BYRD. Go ahead.

The CHAIRMAN. Senator Fong?

Senator FONG. Dr. Levi, I want to congratulate you on your nomination to be the next Attorney General. Much has been discussed here, Mr. Levi, on the question of wiretapping. As you said a little while ago, you have to follow the law as we have passed it. I remember when this law was passed several years ago.

I fought the Omnibus Crime Control and Safe Streets Act of 1968 when it was before us on the Senate floor. The surprising thing about it, though, is that although much has been said here and elsewhere about wiretapping, or rather, against wiretapping, there were only four votes in the Senate against that bill and its wiretap provisions. I remember that Senator Hart voted against it, Senator Metcalf, Senator Cooper and I voted against it. There were only four votes against it. But I am not surprised that there is a change of feeling concerning permissive wiretapping.

So I do hope that we will be able to look at that statute again and probably, to modify it.

I visited with you a few days ago in my office, and I told you then that I was quite concerned with the great turnover of personnel in the Attorney General's Office. Within the last few years, we have had five or six or seven Attorneys General or Acting Attorneys General. I hope that you have a long tenure because, unfortunately, as soon as one gets to learn the job, we find that he is leaving. And, the experience that I have gained in this field, tells me that the heads of the department and especially the assistants have a tenure of less than 2 years and that no sooner than they learn their jobs, why, out they go and all the work evolves upon mostly GS–18's, GS–17's, GS–16's, and GS–15's. Further, as we have seen in the Attorney General's Office, within the last 4 years we will be having five Attorneys General. That just is not good for the morale of the Department, especially since Congress has not seen fit to see that those who really carry on the day-to-day work of the Government, the GS–18's, GS–17's, GS–16's, and GS–15's, are paid a comparable salary with that paid in private industry.

We have in the last 5 years held down their salaries to the level of $36,000. We have not seen fit to give them a higher salary, commensurate with their responsibilities. I think this will be one of the main causes of the morale problems you will find in your Department when you take over.

Now, may I ask you about something which came out or was alluded to in the newspapers—that you were a member of the National Lawyers Guild? Could you tell us something about that, how you got involved? Are you still a member of that Guild, or, if you are not a member of that Guild, when did you get out, and what motivated you to get in and to get out?

Mr. Levi. Well, I'm not a member of the Lawyers Guild. I became a member of the Chicago Chapter of the National Lawyers Guild sometime in the late 1930's, and I do not know the precise date. I was motivated to do it because, I suppose for two reasons. First, as I think examination will show, many of the really distinguished Chicago attorneys at the present time became members of the Lawyers Guild in Chicago at that time.

Senator Fong. What time was that? What year was that?

Mr. Levi. That would be around 1937 or 1938.

Senator Fong. You had just finished law school then?

Mr. Levi. That's right. And secondly, I was interested in legal aid for the poor, neighborhood law offices, and I was asked to do some work on that subject for the Lawyers Guild group.

And I think that was my introduction to them. In addition, for some reason which I cannot now recall, it seems strange to me they were interested in chapter 10 of the Bankruptcy Act. I had finished being

a co-editor of a textbook on bankruptcy, and I, with another gentleman, wrote a comment on chapter 10 for them.

In the early 1940's, and again, I'm not quite sure what the date is, I ceased paying dues to the Lawyers Guild. When I came to Washington in the summer of 1940 I was invited by some people I knew to go to the national board meeting of the Lawyers Guild in Atlantic City and I did so. I think I spent most of my time on the beach. I think that was my last contact with the Lawyers Guild.

Senator FONG. I see. What motivated you to leave the Lawyers Guild?

Mr. LEVI. I suppose that I really did not know what position the National Lawyers Guild was taking as opposed to the specific matters of legal aid which I had been interested in when I had become a member in Chicago.

Senator FONG. Since that time you have had no dealing with them?

Mr. LEVI. Well, I haven't had any personal dealings with them that I know of. A member of the University of Chicago faculty during one period was the president of the National Lawyers Guild, but I have had no dealings with them.

Senator FONG. Your membership in that guild would not affect your decisions nor your actions at Attorney General?

Mr. LEVI. No, of course not. I suppose my interest in legal aid for the poor, which has become much more of a general notion, was reflected in my early membership.

Senator FONG. Dr. Levi, we have spent a lot of money in LEAA activities. I hope you will take a real look at LEAA to see whether that money is well spent. Every year, we spend almost $1 billion trying to hold down crime but crime has not diminished, although they say the rate of crime in the cities have not accelerated as much as before.

I hope you will really take a look at it and give us your candid opinion as to whether we should continue appropriating that much money and whether it has been used to obtain the maximum benefits therefrom.

Mr. LEVI. Well, I would be glad to do so. That is a lot of money. Inevitably, there will be some slippage. It is a magnificent opportunity to do something about law administration in this country and I think it is terribly important.

Senator FONG. As a member of the Senate, from time to time we do have inquiries from our constituents as to what are the possibilities of their being paroled or of their being pardoned.

Would you deem it improper if a Member of Congress were to call your office and ask what are the possibilities of "A" being pardoned?

Mr. LEVI. I believe in the first amendment even for Congressmen and Senators, and I do not think there is anything wrong with the call. As to the nature of the response, I think that would be a different thing, and I am not in a position to know what could be stated. But I see no reason why inquiries cannot be made, but the answer might have to be that it was impossible to give an answer to that question.

I'm saying that because I really do not know what the appropriate procedures are.

Senator FONG. Judging from that, I presume you have no objection if a Member of Congress wrote you and recommended very highly that a pardon be granted in a case where he knew the man and, under the circumstances, felt the man should be pardoned? You would not feel offended nor would you feel that would be improper, would you?

Mr. LEVI. I don't think so. If there is an implication that something else is involved, then of course I suppose we can all start looking under the letter and every other place. But I see nothing wrong with that letter.

Senator FONG. Thank you, Dr. Levi.

Senator HART [presiding]. It was my understanding from Chairman Eastland that we would vote on the Senate floor at 3 p.m. and that we should recess the committee promptly at the 3 p.m. buzzer.

Senator Percy I know will not be able to return and he indicated he wanted a very brief statement if we could permit that now.

Senator KENNEDY. Can I get in an idea how long we are going to meet today, Mr. Chairman? I know that Senator Byrd and Senator Abourezk and others have questions. I would like to come back. I have some other areas to cover. I wonder how late you intend to go?

Senator HART. Why don't we ask Chairman Eastland when we are over at the roll call.

Senator PERCY. Mr. Chairman, because I cannot return, and because the questioning has been very incisive, I would like to give my colleagues what I can on a few of the questions that have been raised from my own 25-year knowledge of Dr. Levi.

First, with respect to the questions Senator Kennedy asked about appointments. I think this is extraordinarily important. I can only say that as the dean of law school no matter how many times a trustee would call and say he had a friend that he wanted to get into the law school, no matter how much pressure was put on the dean, the capability of a student to succeed was always the rule that governed. And I cannot imagine the Attorney General, if confirmed, succumbing to any kind of pressure. Otherwise Don Rumsfeld, the chief of staff, would never have supported the President's nomination. He knows the kind of a man Dr. Levi is. He knows he is independent in judgment but constantly seeks counsel. And I would only remind my colleagues that with respect to Presidential appointments by precedent of the Senate there is not an awful lot that he can do when the initiation for U.S. attorneys and U.S. marshals comes from the Senate itself. He's very much dependent upon us for the quality and character of the men and women that we nominate or suggest to the White House for those posts.

Senator KENNEDY. Would he like to take them out of that, though, Senator? Would he like to remove them from any political consideration?

Senator PERCY. I would yield for a comment.

Mr. LEVI. I really would not. I think there is a better self involved in the political process. I think good recommendations can come through this process, and I see no reason to fault it on that basis. I do want to be able to say, and I have said this to some people, that if a recommendation comes and does come to my notice and I think it is a terrible recommendation, I want to be free on my part to say that I do regard it as a terrible recommendation, and I will say so.

Senator PERCY. And second, on Senator Fong's comment on crime, I did not mention in my opening comments one particular quality that I think Dr. Levi has which is an unusual one. He has lived and presided over a district in Chicago that has been one of our high crime areas and he has been able to save a multimillion dollar university by making the community of Hyde Park and Woodlawn livable. He has fought to make it such an attractive community that faculty members would live in it rather than outside of it. He has had jurisdiction over a sizable police force and his brother, Dr. Julian Levi, is one of the noted urbanologists in the country. I can simply testify to the fact that crime would be very much on his mind and he has an expertise which I simply overlooked in my own introductory comments.

Last, I would like to mention to the committee that from my own knowledge there is deep dismay at the appointment of Dr. Levi on the part of those associated with the University of Chicago. The students, the trustees, the alumni, the faculty, are all concerned about his leaving. And as a trustee of the university I can only say to them that this is the kind of an appointment we want. We don't want anyone that they would applaud his leaving. We want someone that would be, that people would say: He cannot afford to go.

Certainly his ability to work with labor organizations at Argonne Laboratory and other labor organizations, the high regard in which the business community holds him, the alumni, the students of the University, indicates, I think, the kind of esteem that he will have in the Department, as we know that the morale in the Department needs to continue to be strengthened. He has not sought this post. He rejected and turned down with regret a circuit court of appeals appointment. And if there was objection to his appointment, I knew that he would not seek it in any way.

But I think and I can say to the Chicago community that it would be wrong for him not to have accepted the appointment. I think he is very much needed and I certainly think the committee has done an outstanding job in the questions that have been raised today.

Thank you, Mr. Chairman.

Senator HART. Thank you.

We will recess to resume following the completion of the roll call.

[A brief recess was taken.]

Senator KENNEDY [presiding]. We will come to order.

Mr. Levi, I would like to get some of your ideas on the issue of crime and on what you think the Justice Department can do about crime in this country. And I would be interested at the outset as to what you think are the principal areas of crime today, the areas you are most concerned about. Is it organized crime, crime in the streets, white collar crime? What are the principal priorities in your own mind, when you become Attorney General, that you are going to focus on?

Mr. LEVI. Despite what Senator Percy so graciously said, I do not really regard myself as an authority on crime and its control, but my view would be that our highest, very high priority has to be given to control of crime in the urban settings because that is an area with which I am most familiar, and unless we can have more effective law enforcement and law administration in the greater urban centers, I think, this will have a disastrous effect upon our society.

Senator KENNEDY. How can that best be done?

Mr. Levi. Well, I think it requires, I was going to say a coordinated push. I'm not sure that coordination is really possible but there must be a push on many levels at the same time. It means more effective policing, I think, it means much more effective gun control in the urban centers. It means more effective prosecution. It means, I think, a somewhat different attitude on the part of the courts. And it also means that we have to work through what our attitude and approaches are going to be toward the kind of penitentiary system which we have in our country.

Now outside of that kind of problem it also does mean, since so much of this is a problem of young people, it does mean a more effective system of schools than we have in many of the urban centers.

Senator Scott of Virginia. Would the Senator yield?

Senator Kennedy. Yes, I yield.

Senator Scott of Virginia. On this question, we had and we do have an acting U.S. Attorney in the District of Columbia who at one time made the statement he would not enforce the marihuana laws. On the other hand, we had Attorney General Saxbe who indicated he would enforce the lottery laws, the antilottery laws. And I just wonder what your attitude is with regard to enforcing laws on the books. What sort of discretion would you exercise with regard to enforcing existing laws?

Mr. Levi. Well, I don't want to make a complicated answer. I think there are some laws which we all would be surprised to find on the books, and they have kind of died as a result of some sort of desuetude. But those aren't the kind you are talking about. These are laws dealing with notorious matters, and as long as they are on the books they should be enforced. I think it is a wrong thing for our society to engage in that kind of doubletalk of having laws which are on controversial matters but then to decide that they are not to be enforced or that some will be and some won't. So I think they should be enforced. It may be that some should be repealed.

Senator Scott of Virginia. Thank you.

Senator Kennedy. Well, you are, I am sure, very sensitive to the point, however, that there are many criminologists who think that we spend too much time cracking down on marihuana users and not enough on doing something about organized crime or crimes of violence, which are certainly even a greater threat to personal security.

So I think this is, given the kind of allocation of resources, something which is important to understand in terms of the areas of priority that you have.

I gather from what you have said it is urban crime, and I imagine this is what would normally be characterized as crime in the streets. Now do you think, given your response, that this translates into allocating additional funding for efforts to meet that threat? Do you see that as being a likely possibility as well?

Mr. Levi. Senator, I am really not in a position, perhaps I should be, to discuss the budget for the Department of Justice. I am sure that one would want additional funds but I am really not in a position to make an expert judgment on it. I must say I was asked before, how are the LEAA funds spent, and these could help greatly if they are spent correctly.

Senator Kennedy. I am sure you are aware of the report of the Violence Commission. When that Commission addressed itself to the

problems of crime it also, particularly in the urban areas, talked about the economic conditions which existed in many of the areas of high crime. It talked about jobs, housing, education for minorities, and I am just wondering what your general reaction is—whether you feel that these factors contribute to crime and to what extent do you feel they impact the incidences of crime, particularly in urban areas?

Mr. LEVI. I am sure they contribute to crime and I did mention a better system of schools as being one example. But there are a host of examples. One could ask whether the services which the community provides are least provided in the areas which need it the most. But, I would not want to say that for that reason the enforcement of law itself should not be carried out because I cannot imagine anything worse, really, for the protection of the poor in urban centers than an assumption that crime is all right for them and law enforcement is to be reserved for other areas. They need protection too and they want it.

Senator KENNEDY. You have indicated that one of the aspects of concern that you have would be the proliferation of the availability of weaponry, typically handguns. And, of course, this is something that not only I agree with. I think the various commissions on violence and crime have virtually uniformly recommended stronger gun controls. And I am wondering if you want to elaborate at all on this particular question?

I am thinking most specifically of what is generally considered to be "Saturday night specials." You are aware that over a period of about 4 years we had indications that the Justice Department was going to send up recommendations, which we have never received. And I am just wondering in the area, for example, of the "Saturday night special," whether you think this could be one of the areas which you would place as a priority?

Mr. LEVI. Well, I do give it priority. I think it is going to be extremely difficult. I know that there are divisions in this committee on that subject, and I gather there are divisions within divisions. And whether one can devise, accepting the important constitutional problem, whether one can devise acceptable, better, effective control over the "Saturday night specials" for urban areas, which means a better interrelationship between Federal regulation and local control, I do not know, but I would like to try very hard to accomplish that, and I would give that high priority but I am sure it is a difficult problem.

Senator KENNEDY. Would you be sending us legislation on the "Saturday night special"?

Mr. LEVI. I will try to send you proposals or to try to bring proposals together which might win some appropriate acceptance and which, as I say, would both preserve the constitutional right and might recognize the special problems in the urban centers and might provide some better way of interrelating the Federal regulation with local control.

I would give that very high priority. I do not know whether I would succeed on that or not, but I would want very much to.

Senator KENNEDY. I can understand, and I think all of us who have wrestled with this issue for some time understand, that there are different views among the members of the committee. What we are really interested in here is your view particularly on the "Saturday night special."

I do not understand what the possible opposition is from the various sporting groups on that particular item. They are inaccurate beyond 5 to 7 feet. It is absolutely indefensible for a sporting purpose. I can understand and recognize the argument that if you start moving down that road then it is going to stretch out into handguns and long guns and all of the rest, but certainly with regard to "Saturday night specials" I do not see how there could be any reluctance on your part in indicating that you would want to send legislation to the Congress, and then permit the Congress with the administration to work its will.

Mr. LEVI. Senator, I did not really mean to express my reluctance. I said I would make the proposal. I agree that what will happen to it when it gets to the committee I do not know.

Senator KENNEDY. But you will make a proposal on it?

Mr. LEVI. Yes.

Senator KENNEDY. What deterrent effect do you think there is in imposing the death penalty for certain Federal offenses?

Mr. LEVI. I think that there is a sense that no one knows the answer to that question, and it is frequently said if you do not know the answer to the question, then the death penalty is wrong. I don't really believe that sociological, behavioral science research has developed to the point where we really know or we could prove the greater deterrent.

My own view is that there may well be a greater deterrent. That means, though, however, that the death penalty not only exists, but that it is enforced, that it is enforced quickly and that there is not a feeling of outrage and a feeling that perhaps mistakes were made.

So that I think that this is a very important legislative matter. I have written on the subject. I think the death penalty, as we had it, which was not enforced, did not have a good effect on our criminal system, criminal justice system. I think a death penalty, to have an appropriate effect—in fact, to find out whether it has a deterrent effect—has to be enforced. And so that it seemed to me it was a legislative matter to define those areas where legislatures believe that the crimes were such and the deterrence was that important that a death penalty could be imposed, would be effectively imposed.

I thought, I am frank to say, that the Supreme Court opinion in the *Furman* case, which has created all kinds of difficulties, was a mistake because I think the Court was taking out of the hands of the legislatures what they should decide. Now this is probably not a very popular combination of views which I have on this subject. It probably will be getting me into difficulty on both sides of the question, but to summarize, I think there is a place for the death penalty but I think it would have to be very carefully worked out. There is a problem now as to the reach of the Supreme Court cases and I do think it's a legislative matter.

Senator KENNEDY. Now do I understand that your position is that, at least in your own mind, it is an open question on the deterrent impact that the death penalty has on crime, but you think that in order to be able to discover if there is a deterrent, we ought to implement it more effectively, more immediately, and more strenuously and then make a judgment based upon new studies to find out what its deterrent is? And then perhaps we will know the answers to the question I asked as to what you feel is the real deterrent of the death penalty?

Mr. LEVI. I will have to try to answer that briefly. I think that when you have a question such as the deterrent effect of the death penalty

where I doubt very much whether we have the data and the statistics and the kind of sociological research and so on, I think common sense is the guide and my belief is that the death penalty, if enforced in a limited area, would have a deterrent effect.

Now if it were enforced in a limited number of cases I suppose one might see by looking at statistics and so on and so forth whether there is a greater deterrent effect. But I think if we say, "Well, you cannot go by your common sense reaction and you have to wait for the proof of the sociological research," then I doubt the proof will come.

Senator KENNEDY. Why isn't it just as legitimate to say, "Well, why not abolish it for awhile and do a study of this as well"?

Mr. LEVI. Well, the fact is it has been abolished for a while, in fact.

Senator KENNEDY. Well, what conclusions do you draw then?

Mr. LEVI. Well, the conclusion that I draw is that we have a very difficult crime situation in this country and that my belief is that for a limited category of offenses it might be desirable to reinstate, if one can do it, the death penalty, if it can be quickly enforced and is acceptable to the communities.

Senator KENNEDY. You have made the decision that it does have a deterrent effect, at least as far as you are concerned?

Mr. LEVI. I am saying that I think that would be my judgment as to a commonsense reaction to it, but I don't think it is a kind of thing that one can prove through statistical studies or any of that sort. I don't think one can disprove it either.

Senator ABOUREZK. If you would yield for just a minute. What specific crimes do you have in mind to which you would apply the death penalty?

Mr. LEVI. Well, I would think skyjacking would be one of them where certain consequences have ensued. I would think that would be one area. I would not try to have a long list.

Senator ABOUREZK. What would be in the list, though? That is what I am trying to determine.

Mr. LEVI. Well, I'm not sure what would be in the list, but I would assume that murder in the penitentaries by people already under sentencing, on police officers in certain circumstances. I would have a limited list. I think I would follow the kind of direction which was followed in England some years ago.

Senator ABOUREZK. Is that the extent of your list or are there more crimes that you would include?

Mr. LEVI. Well, I have not tried to give you a total list. I am thinking of a short list.

Senator ABOUREZK. Can I ask you for that now, if the Senator would yield further? What would comprise your full list, and I assume you have given this a great deal of thought?

Mr. LEVI. No: I really haven't. I haven't given enough thought to devise a full list. I think it is too serious a subject to discuss it in this way. I do think there are a limited number of crimes, such as against police officers, skyjacking, crimes for people who have been previously sentenced on murder charges and are in penitentaries and have proceeded to kill again.

The list would not be very long.

Senator ABOUREZK. Well, if I could summarize your statement, that is the minimum number of crimes to which you would apply the death penalty, and there might be more?

Mr. Levi. My belief is if it is a long list, we will be right back to the kind of problem we had before, but I may be wrong on that.

Senator Abourezk. We need to determine what that list is.

Mr. Levi. That is correct. You need to in terms of Federal crimes, unless you are going to also legislate minimum guidelines, as conceivably you can under the 14th amendment, for the States. I regret that because I think they should be a matter for the State legislature. And I really think it is a kind of thing that ought to be debated out. If I have any hesitancy in answering I think it is the kind of thing that a community has to decide that it feels strongly about and it really needs it and it wishes not only to vote a death penalty on this but in fact to have it enforced.

Senator Abourezk. You are saying that each community ought to decide whether the death penalty ought to be enforced or not?

Mr. Levi. Well, I have said that I thought that the *Furman* case was a mistake but it is with us. I would have preferred a response by the individual States. Now under the *Furman* case, as we know, it may be that following certain restrictions it is still a matter for each of the States.

Senator Abourezk. I would like to come back to that when it is my turn but I will yield back.

Senator Kennedy. One of the things in the skyjacking case, of course, that I think is troublesome is that you can quite easily imagine a circumstance where a skyjacker has killed one person and under your recommendation he might as well bring the whole plane down if we are not going to consider any of the mitigating circumstances on this. I would think a law enforcement official should at least be able to talk about options. With your quick, fast death penalty here I am just wondering whether that isn't a consideration?

Mr. Levi. Well, I think, Senator one of the problems that we get into is an interpretation of the *Furman* case because in order to have it constitutional it has to be automatic and of course you get into that kind of a problem. I'm not sure that has to be the constitutional interpretation.

Senator Kennedy. Well, I just wonder how you achieve your end if you are going to give consideration to these other factors, to mitigating circumstances, whether you are not right back where we are at the present time?

If you have given this some thought, what has been your reaction to the various studies that have been done on the death penalty that show quite conclusively that it is generally the poor and minorities to whom the death penalty has been primarily applied? What is your feeling and sense about that? Do you think that is the case? Do you think it would be any difference if your—well, let us just answer the first part.

Mr. Levi. Well, I think it is probably the case in the sense that one has to take a statistical view of the population, and I suppose that is one reason why I would want a very limited list of crimes to be handled by the death penalty.

I would not think that with the kind of list that I have in mind people of wealth committing those crimes would likely not have the penalty and people who were poor would have it. I think it would not be that kind of a list.

Senator KENNEDY. You have, I am sure, read the newspaper accounts during the recent few days about the various files supposedly kept by the FBI on various congressmen and I am just wondering whether you feel that outside of the obviously legitimate interest of the FBI in investigating any citizen—whether he is a Congressman or an ordinary citizen—for the violation of crime or a routine background investigation that is done when an individual is selected for a Presidential appointment, is there any reason or justification for the maintenance of files outside of those obvious legitimate areas of interest?

Mr. LEVI. Well, I think I indicated this morning, Senator, that I would—this isn't answering the question but I will come to it directly—that I would, if I were confirmed, accept the obligation to draw guidelines covering this area. I would do so working with the Director of the Federal Bureau of Investigation and I would bring, for both consultation and other purposes, such guidelines to this committee. Now going to your question, one of these——

Senator KENNEDY. Just before we do that, would these be public guidelines?

Mr. LEVI. I would hope so.

Senator KENNEDY. Is there any reason why not? I mean, shouldn't the public know? Wouldn't that be in the public's interest?

Mr. LEVI. I think the public should know and I think there should be reassurance that surveillance for political purposes is contrary to the whole purposes of this kind of investigatory permitted parameter.

Senator KENNEDY. It does not have to do with political purposes, does it?

Mr. LEVI. No; it doesn't have to be for that either, but of course when one talks about Senators and Congressmen one is likely to think of that. But it goes beyond that obviously.

And so I would hope there would be public guidelines because I think it would have a much better chance of being enforced, for one thing, and I think it would set a lot of minds to rest as to what our situation is and what we believe in.

So I have said that I would assume that obligation. Now I do think there is a problem. You asked me was there any other purpose. Well, one talks about files. There are all kinds of files and I am not sure what files mean. One problem would be what happens to material which is sent to the Bureau, for example, unsolicited? Does it get thrown away? Does it get put into a file? Is it to be separated out? And I really do not know what the right answer to that is, but I think if we can set out the proper guidelines, these things will fall into place.

Senator KENNEDY. What does it do on material it gets for any "Joe Q. Citizen"? Should it not treat it for a Member of Congress the same as it does for "Joe Q. Citizen"? Would there be any reason to do otherwise?

Mr. LEVI. Well, I think the same rules should appply except that I would want to allay any suspicion that a security system of this kind was being used to put pressure on people in Government or in Congress. But otherwise, of course, I would think the same rules should apply. And so I am certain that these guidelines starting in this area would be very difficult but I hope they can be done. I hope they can be public. I said I would assume that responsibility and I should think they would apply to a larger area.

Senator KENNEDY. Of course, if they did not collect the material, there would be no reason why you would have to give any assurances.

Let me just finally ask, as you well know, Mr. Levi, a select committee has been set up that will be looking into this area, and we have already seen conflicting testimony before this committee by different spokesmen for either the FBI or the Attorney General. I would like to give you an opportunity to indicate your willingness to clarify the situation and work with the new select committee in a way that is going to, I think, clear the air on this. I am sure there is no hesitancy on your part.

Mr. LEVI. I will do my best to do so.

Senator KENNEDY. I want to thank you very much for your responses. There are a few other areas that I am interested in and I hope to be able to get back to you on.

I have some questions about the Immigration Service. The chairman of this committee is the chairman of the Immigration Subcommittee, and there have been a number of charges and allegations about INS activities which I would be interested in your reaction to.

Also, there is the area of Indians and Indian rights, and the fact that the Justice Department is charged with defending Indian rights under a variety of laws and treaty obligations, but usually ends up defending the Bureau of Reclamation, to the expense of the Indians. I have made some proposals about how best to deal with this, and it is something on which I would like to get your ideas.

We did not get into the civil rights area, or voting rights legislation, and I would hope to be able to come back to talk with you on this.

You talked a little bit about the special prosecutor; there will be a number of matters that will come back to the Justice Department for decision and on appeal, and I would be interested in getting your reaction about what kind of supervision you are going to have over the Criminal Division of the Justice Department. I will try to get back and pursue some of these.

I want to thank you very much for exchanging views this afternoon.

The CHAIRMAN. Senator Scott?

Senator SCOTT of Virginia. Thank you, Mr. Chairman.

Senator Percy suggested, and others have commented about taking the Department of Justice out of politics, and I have heard some of your responses to that, but I wonder, as a member of the President's cabinet, can you adjust any thinking that you might have to be harmonious with the Presidential thinking, as a general rule, and if you felt very strongly and could not reconcile your thinking, would you consider resigning or just discuss this, working in harmony with the administration, whether or not you agree with the administration on this specific matter?

Mr. LEVI. I assume that the President has asked me to take this job because he is interested in impartial administration of justice, and I have not any doubt that the Attorney General is the lawyer for the Government, in a sense a lawyer for the President, only the President has other lawyers as well, and that there is a proper loyalty which we all recognize as lawyers to the idea of law itself.

If there were a matter, which I find extremely theoretical, and I find quite unlikely—but anyway, a matter of great importance, where I found that the direction I was being asked to take was one which I

thought seriously wrong, so that I could not in good conscience follow it, then it seems to me it would be up to me to resign.

Senator SCOTT of Virginia. My thinking is that oftentimes you hear a Member of the Senate indicate that he might not agree with the President's selection of a Cabinet officer, but he believes that the President should have the right to select his own Cabinet officers.

I think really in saying this, they are sort of prefacing—and it may be unsaid—that the members of the Cabinet work in harmony with the President, and my question really is, are you prepared to do this?

Mr. LEVI. Well, of course. Otherwise, I would never have agreed to consider the honor.

Senator SCOTT of Virginia. Well, in a sense that's political?

Mr. LEVI. Well, I understand. I do not fail to understand the position of the President of the United States, as the Chief Executive, is political in the sense it is——

Senator SCOTT of Virginia. I do not think the Government can operate efficiently without something of this nature.

Now, it has been suggested by some—we had a Consumer Protection Agency Act that came before the Senate, and as introduced that indicated that appeals could be taken at the instance of the head of this proposed agency.

We have had some administrative agencies, I believe, who have wanted the right to decide whether an appeal should be taken. It is my understanding that the Department of Justice has plenary jurisdiction over the conduct of lawsuits, that the Solicitor General is the one who decides whether an appeal should be taken. He personally acts on this, and I just wondered—there is a little conflict here—and I just wonder what your position would be on this?

Mr. LEVI. Well, my general attitude is that this should be one for the Department of Justice to decide, and not for each of the independent or semi-independent agencies. I think otherwise there is a great lack of coordination and direction in Government of the United States. I think there probably always is anyway. But I must say that it seems to me a sensible administration of justice does require that coordination. Now there have been exceptions; probably there will be more exceptions. I would like to hold down the number of exceptions.

Senator SCOTT of Virginia. A few minutes ago when Senator Kennedy was asking you about the death penalty, I believe you added a little dicta there with regard to State authority under the 14th amendment, and I am not sure that I understood what you had in mind. I would assume that even if we say that the Federal Government might have some jurisdiction over State offenses, you are not suggesting that the Federal Government take over the police power of the States? Could you clarify that a little bit for us?

Mr. LEVI. Why, yes. Really, what I was saying is that the Supreme Court, I think erroneously, took upon itself what I think was really a kind of legislation with respect to the death penalty in the various States, and that it would have to be assumed that it had done so under the 14th amendment.

Now, if that is going to be the law, then I take note that the 14th amendment also provides for the Congress to take action, and I would much prefer to have the Congress take that kind of action than to have the Court take it.

Senator SCOTT of Virginia. Now, would you want the Congress to take jurisdiction over a strictly State offense, say, somebody not on a Government reservation or somebody within one of our cities and States not under Federal jurisdiction would commit the crime of murder. Are you saying the Congress should legislate in this field?

Mr. LEVI. No; but if the Supreme Court establishes, as it apparently has, guidelines which control State action, then it seems to me that it might be better to have the minimum standards established in at least a legislative body which would be the Congress. I have already said that I thought the Supreme Court's opinion was wrong, and this is a matter that should have been left for the States.

Senator SCOTT of Virginia. Well, two wrongs do not make a right. You are not suggesting that if the Supreme Court is wrong, then the Congress should be wrong and take over the police power of the State?

Mr. LEVI. No. I am suggesting, if we find ourselves, as we sometimes do, that the Constitution as interpreted means that there is really a Federal law on the subject, then I would rather—and if we accept that—then I would rather have that kind of a problem in this area worked upon by the Congress. It does not mean that I think that this is a matter which belongs there. I have said before, I think it belongs in the State legislature.

Senator SCOTT of Virginia. Thank you.

Mr. Chairman, just let me make a brief statement, if you will.

My inclination is to follow the President's recommendation. I compliment the witness on the responses he has made this afternoon. He has shown that he can answer questions by himself without Senator Percy being here to defend him and I commend him on this. If he is going to be the Attorney General of the United States, I would think he would have to have that capability, and I would hope that we can favorably report this nominee to the Senate.

I have some reservations about some of the answers that were given in the field of gun control, it appearing to me to be more of a State matter, and I just hope that in the event of your confirmation—and I believe you will be confirmed by the Senate—that you will be zealous of the rights of the States, as well as your duties as Attorney General.

Thank you, Mr. Chairman.

Senator BAYH [presiding]. Thank you, Senator Scott.

I think I may be next.

Mr. Attorney General designate, it is a privilege to have you here.

I would like to ask some questions in two areas that I do not think we have yet addressed ourselves to here.

Before doing that, let me just cover very quickly an area or two that I think you have addressed yourself to. As I understand it, you are unwilling to make a judgment as to what the Bureau or the Department should do with information that comes in unsolicited? Is that accurate?

Mr. LEVI. Well, I don't know how that problem should be dealt with. I have committed myself to seeing to it and personally taking part, taking the obligation to draw up guidelines, and what I was saying is that the one problem I think will be the question of what happens to the kind of material which it is said that these surveillance operations has not been seeking at all, but it comes in, and apparently, there is some argument, which I do not find terribly persuasive, that that can-

not be disposed of because of a Federal law which says that the General Services Administration has to disposed of it.

I do not find that persuasive because if that is the problem, the law could be changed, but I think there is a problem as to the—whether or not that kind of information perhaps for the protection of the agency itself, which may later be told—well you were warned about these things, and you did nothing—whether that kind of information does not have to be kept in some form or other, and I was really exercising, I think, a natural precaution. I have not discussed this with the Director of the Bureau, and it does seem to be wrong for me to jump to conclusions without the best advice I can get.

Senator Bayh. Well, I don't think there is much need for me to pursue that further because you can hardly be expected to have studied it.

Just as one member of the committee, who I think shares your concern as I have heard it expressed and you have expressed it to me, just going out here and compiling dossiers on people is contrary to the way we normally feel a free society is governed. As I suggested in response to your comment that you thought Congressmen should be treated like everybody else, I concur, and I am alarmed that we on the Hill get all exercised, and some of our friends in the press get all exercised, when we find that John Smith and Sally Brown, who happen to be elected officials, are having information compiled on them. But if that happens to an individual citizen, it seems to me it is just as much a matter for concern, and that we ought to direct our attention to that basic concern. I for one would hope that you would proceed quickly and thoroughly with the study because as just one member of the committee, and I think there are several, we are going to want to have something more definitive after you have had a chance to get your feet on the ground down there. If you resolve that all the information that comes in has to be cataloged someplace, it sort of has a chain reaction, you never stop putting people in files, and I do not think either one of us wants that.

You suggested this morning, as I recall, that you thought the very attitude that people have that they might be being watched is bad. I think you also said you thought this might have been exaggerated. Could you tell us, in your capacity as Attorney General, when you have had a chance to be there for a short period of time, or do you now have the answer to the question, how many of these files have been kept?

Mr. Levi. No, I don't have the answer. And I must say that there is another problem, and that is that it is going to be very difficult for any statement that is made about that now to be believed. That is why I think it is important to start afresh with guidelines, which, if possible, would be public, and then some way indicated what it done on it.

Senator Bayh. I am sure you would hardly suggest that a reason for not making information available is that nobody is going to believe it?

Mr. Levi. No, I think it has to be done, but I think that it is not enough, it is not enough to say, look, this is not a serious problem because we cannot find many files——

Senator Bayh. I concur, but would it be possible for you to provide for this committee, not the name, rank, and serial number of those people who are on file, but the numbers? There is a great deal of dif-

ference between 2,000 and 3,000 and 2 million and 3 million, as far as the concern that the American people might have and the Congress might have.

Mr. LEVI. Well, I will do my best. I am a little hesitant to make a firm commitment because it is possible I will run into so many questions as to what constitutes a file that the obfuscation will be complete, but I will do my best to try to get that information.

Senator BAYH. I would think you would find most of the members of this committee reasonable in accepting a definition of what a file is composed of. Why do you not try us?

Mr. LEVI. I really wasn't disturbed about the members of the committee. I was disturbed about the information which would be given me.

Senator BAYH. All right, if you would pursue that, I think we would appreciate it.

Another closely related item that has been discussed is the national security type wiretap, the warrantless wiretap. Could you tell us how many of those are now being conducted or have been conducted over the last year?

Mr. LEVI. Well, I do not know the answer to that.

Senator BAYH. Could you supply it for the committee? Attorneys General in the past, so I do not catch you from the blind side, have made this information available. However, your immediate predecessor, our good friend Bill Saxbe, has not made that information available, but it seems to me that this is the kind of information that also would help the Congress and the country to determine just how serious this problem of warrantless wiretaps is.

Mr. LEVI. I am perfectly willing to say that I will try to make such information available, subject to my discovering that for some reason unknown to me now that was a very silly pledge on my part and I would have to come back and make some explanation, which I hope will be a sensible one if I can't do it, but I would certainly intend to do it.

Senator BAYH. Thank you.

May I ask you now to turn your attention to a piece of legislation which is going to be before this committee and on which I think some of us, and perhaps the entire committee, and I am sure the country, would consider your position a fundamental prerequisite for the job you are about to hold, namely the extension of the Voting Rights Act. Could you tell us, Mr. Attorney General-designate, your position on the necessity and the likelihood of extending the 1965 and 1970 Voting Rights Act?

Mr. LEVI. Well, it seems to me the President has taken the position that it should be extended, and my position is that it should be extended.

Senator BAYH. For how long a period of time do you feel that it should be extended?

Mr. LEVI. Well, I do not know whether that's 5 years or 10 years. I think that is a matter which no doubt the President has decided, and I do not know what he has decided.

Senator BAYH. You have no independent thoughts on that to give him if he counsels with you on it?

Mr. LEVI. Well, I probably will have, but I would certainly take a few hours to think about it and maybe even a week.

Senator BAYH. I would suggest that is only prudent. Is it fair to suggest that this question is a question that it is not unreasonable for you to have anticipated prior to coming up here? I do not think that is catching you from a blind side?

Mr. LEVI. Oh, no, no. But I think that when one talks about the extension, whether it should be 5 years or 10 years, this involves very difficult matters of judgment which I am not sure I am the best person to say.

Senator BAYH. Can I ask you to give us your judgment, if you have had a chance to contemplate it, on another aspect of that measure; namely, who should be covered? There is a rather significant difference of opinion right now.

On one side there are some people who feel, let us not shake the boat, let us go ahead and make sure we continue the kind of progress we have had, where we have probably 1 million new black voters on the rolls now who could not get in a county courthouse before.

On the other hand, there are those who suggest that there are certain other groups of American citizens, Spanish-speaking Americans just to mention one, who are disenfranchised now to the same extent that their black brothers and sisters were disenfranchised before the passage of this act.

Could you give us your judgment as to what would be the prudent position for this committee to take?

Mr. LEVI. My position is that the most prudent position would be a straight extension.

Senator BAYH. You have no concern about those Mexican and Spanish-speaking Americans and Puerto Ricans?

Mr. LEVI. Of course, I have concern, although many aspects of the legislation would apply to them anyway. I would opt for a straight extension, I think.

Senator BAYH. Why?

Mr. LEVI. Because, as I said, the problems of special tests and the implications of those tests I think would apply to other groups. If one tries to expand that legislation, well, obviously one can make a good argument for it; I guess I have to say that I am not—that is legislative—and I am not prepared to say what is the most prudent course there.

Senator BAYH. Well, I will not pursue it. I think you will probably have a chance to give us your studied opinion in the next few weeks on this. I just wanted to get your general judgment. Given the understanding that it is quite reasonable that you have not had a chance to study that, is it fair to ask you if you would feel comfortable pledging to this committee the use of all of your strength and idealism as well as persuasive power to persuade the administration to give you, and thus to have the opportunity to view and to use, the resources necessary to implement the provisions of the act that does pass, that is on the books now?

Mr. LEVI. Well, I would certainly hope so, and I hope the committee would help me on that.

Senator BAYH. I think you will find the committee more than willing to help you. I think that you may need some help in the higher channels of government downtown, that might be desirous of economies, and we all believe they are important but feel that in this important area we need resources to guarantee the rights of citizenship

for our citizens: and to know that the Attorney General is committed to make an all out effort with the Office of Management and Budget, and with anybody else who might be involved who had the resources that you thought were necessary to guarantee these freedoms, is pretty important, I think, in our consideration.

Mr. Levi. I hope you're right.

Senator Bayh. Would you concur that that would be a responsibility that you should fulfill as Attorney General?

Mr. Levi. I believe it is the responsibility that I should fulfill and that this committee should help me fulfill.

Senator Bayh. As one member of the committee, and that is all I can speak for, I certainly will lend my voice as loud or as soft as it may be considered downtown.

Let me ask one other question, and then I will yield to my distinguished colleagues who have not had a turn.

Are you familiar with the legislation that was passed—and our distinguished colleague from Nebraska who was here a moment ago was instrumental in helping me as chairman of the Juvenile Delinquency Subcommittee with this—the Juvenile Justice Act, which provides for a new approach to the problems of juveniles and the part they play in crime?

Mr. Levi. I know that in a general way.

Senator Bayh. We continue to be concerned about the dramatic continuing increase in crime. I think there was a 16-percent increase last year, and I was shocked, as one who thought he was familiar with the problem of juveniles, when I first started studying this awhile back, to find that the majority of the serious crimes that are committed today are committed by young people under the age of 20 or 21.

We have now a new approach to try to emphasize rehabilitation and prevention which I think more than anything else can deal with the problem of crime, as well as prevent the loss of tens of thousands of lives to crime, once they get in a rut.

I would like to have your thoughts on the importance of this kind of legislation. It is a new program that is in the process of being implemented, and the success or failure could well depend on whether you, as the Attorney General, are willing to lend your significant influence in support of the congressional program which is now the law of the land.

Mr. Levi. Well, I think it is enormously important. If you wish me to say more, let me say all programs of that kind do depend on administration, but it would be hard to think of anything more important in the criminal law field.

Senator Bayh. Then you feel comfortable in a commitment to implement the provisions of that act in the field of prevention and rehabilitation?

Mr. Levi. As far as I can, yes.

Senator Bayh. Let me go back to my distinguished colleague from Nebraska and let the record show for the second time I have expressed the important role that he played in the drafting and the passage of the Juvenile Justice Act, and that I was asking the distinguished witness for his thoughts and his commitment to proceed at an administrative level to consummate the efforts that we began up here.

I want to ask one other question in this area. We are in a significant budget crunch as we all appreciate. When the President signed this

legislation he said I am going to sign it but I am not going to ask for any new money.

To the credit of the people down at LEAA and the Appropriations Committees of the Congress, we now find this situation where there has been about $20 million in the old LEAA programs that are being expended in this field, and there has been a reprograming request approved by both the House and the Senate for another $20 million. The authorization provided in this bill for next year is for $125 million. Now that is a lot of money. It is particularly a great deal compared to this year's appropriation, but when you look at the cost of crime and the significant component of crime that is related to our inability to provide prevention and rehabilitation for young criminals, I suggest this is probably the best way we can invest our money.

But as Attorney General you are going to be hard pressed when you look at that new budget which I understand does not have $1 in it to implement the program that you feel as I do is important. Do you have any thoughts on that problem?

Mr. LEVI. Well, I suppose that I would gather, and I would hope that the State plans that have been drawn up will in fact provide funds for this program.

Senator BAYH. From where?

Mr. LEVI. Well, they will have to take it from somewhere else. And, of course, this relates to how good their conception is as to a unified program, and the part that this can play in a unified program. So I do not know the answer to that until one sees the plans which are drawn up and the emphasis which is given in them to the juvenile delinquent and his or her rehabilitation. It just might be that considerable emphasis will be placed upon that area.

Senator BAYH. With all due respect, let me suggest that the distinguished gentleman sitting behind that microphone is going to have as Attorney General a louder voice than anybody else in the administration in determining where those priorities are going to be; and that is why I asked the question, not to embarrass you, but we have to have a champion downtown in that very important role as Attorney General who realizes that we are concerned about lost lives and we are concerned about crime. We had better start at an age early enough that when we invest a dollar we are going to get a return on it, which we have not had after a person has been in the big house two or three times and we direct our attention to him. Those people, unfortunately, are pretty well lost, and we have to protect society from them. To keep future generations from individuals like this, from being thrust on the public, we have to be willing to stand up here, and you down there, and say Mr. President, Mr. Director, of the Office of Management and Budget, we feel that this is a good investment and we are going to do a job of reapportioning our resources to get the necessary money to implement these programs.

Mr. LEVI. Well, I'm not sure I can say more than to say that my interest in this is very genuine. I would be a champion for it. I do think the way the LEAA funds are to be committed depends a great deal on local decisions so that it is not quite clear that this champion has it in his hands to do quite what you say, and I think you may be asking me a question about the total Department of Justice

budget which Congress will have something to say on, and as to that it's very difficult for me to make judgments.

Senator BAYH. Well, let me just say, and I don't want to come close to the line of badgering——

Mr. LEVI. I don't feel badgered.

Senator BAYH. My involvement in this is perhaps the reason for the intensity of my feeling. I think the problem is legitimate. As I understand the new budget, it purports to, and I salute the President, look for ways to effect economies, but in your responsibility down there, and in other departments involved in enforcement, this is the kind of thing where we cannot very well economize unless we are going to do a less prudent job of enforcing. Budgetary cuts are going to be felt by you down at the Justice Department, and they are going to come out of LEAA funds, and that means the shoe is going to get pretty tight. That means that we are going to have to have an Attorney General, and an administrator of LEAA, as well as some of us up here on the Hill, who are willing to go to the mat to see that as these cuts are felt we do not have a program that is new and is just getting started totally ignored. That is why I direct your attention specifically to this area.

Mr. LEVI. Well, I think it is a very important program. I must say as a university president who has had to cut budgets, I don't think you can always measure the effectiveness of the program by the amount of money that is spent on it, and I don't mean that to be taken as indicating a lack of interest, because I think this is an extremely important program, and I am certainly going to be a champion for it.

Senator BAYH. I agree with you that there are measures of success other than dollars, but when the budget request is zero I think that question is moot, and where local and State decisions have an impact on LEAA funds, where you have a new program that is just getting started, and we are talking about changes and new representations on State planning boards with LEAA to try to emphasize the need for prevention and rehabilitation, they look to see whether Congress and the Federal Government that allocates these resources mean business. If I were on one of those planning committees and saw no money in that budget, I would get the message pretty quickly. That is why I think, sir, we have to count on you, and count on our appropriate committees up here to allocate the resources that we need down there in the Justice Department.

Mr. LEVI. But there is a requirement for unified programs, there is a requirement that takes into account the juvenile justice problem, and maybe part of the answer is to make sure that really is implemented.

Senator BAYH. Agreed, but we all know that to implement them is going to take money. I am not talking about—and I want to emphasize this now—we are not talking about mollycoddling young juveniles who commit adult kinds of offenses, who have been in the system, and only their age keeps them from being described as an adult threat to society. We are talking about the commingling of runaways and truants in the system with that other kind of individual which results in breeding a whole generation of those that know all the tricks of the trade.

One of the things that concerns me is that we have some good programs that are started in LEAA, the youth service programs, and many of them, if not all of them, are very successful, but many of them are now faced this fiscal year with having their 3-year grant of Federal funds terminated, and thus we are not going to be able to continue

the good work that is being done, let alone implement a new program and expand its provisions unless we get more money.

I will not pursue this further, but I am going to be asking you—if this is not inconsistent—to stand up and to go to the mat at the same time on these important programs.

Mr. LEVI. Well, I will not forget the point.

Senator BAYH. Thank you, sir.

Senator HART [presiding]. Senator Bayh has concluded or passed for the time being? I was distracted.

Senator BAYH. Yes, sir, one or both of the above.

Senator HART. Senator Thurmond?

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Levi, we are glad to have you with us. I have not had the pleasure of knowing you, and some things I heard at first disturbed me somewhat, but I have been investigating more, and the more I investigate, the better you look. At first when I heard you were a member of the guild I was disturbed because in earlier congressional testimony some years ago the guild was described as the foremost legal bulwark of the Communist Party, but as I have understood your reaction here today, I think you have explained your position of membership in the Guild.

Now, what is your attitude toward a separate internal security division in the Department of Justice?

I get very concerned here at times about our internal security, and have you had occasion to study that yet, or do you want to look into the organization?

Mr. LEVI. I have not had occasion to study it, and I would appreciate the opportunity to do so.

Senator THURMOND. I am sure you do believe in strong internal security?

Mr. LEVI. Well, one has to.

Senator THURMOND. Otherwise we can't survive as a nation if we do not have strong internal security as well as a strong military department to protect us from external enemies.

Now, I wanted to inquire about your thinking on the Voting Rights Act.

Originally when this law was passed, it applied to the 1964 election, based on those figures then. Those States that came under it thought it was very unfair, some counties in some States, because it did not apply to the whole Nation. They just singled out certain States and certain countries. I had always interpreted the Constitution in the light that it had to be applied equally to all of the States and all of the subdivisions alike.

How do you interpret a matter of that kind?

Mr. LEVI. Well, I do have to say that I think that the Voting Rights Act which provides for certain percentages and trigger mechanisms and so on, and it does apply in particular areas, is constitutional. It is an unusual act. One certainly would hope that after a period that it would no longer exist. The President has taken the position that it should be extended, and I have said that I agree with that position, although I must say it doesn't make much difference whether I agree with it or not since he has taken that position.

Senator THURMOND. The President has taken that position, and you feel bound, I am sure, by the position of the Government. On the other hand, if we are going to extend it, would you not take the same position that Justice Rehnquist took when he came before the Congress not long before he went on the Bench? He said if a law is going to be extended, it should be applied to all of the States. So if it results in a deficiency in any one place, in any Northern State, Southern State, Eastern or Western, wherever it is, if there is any discrimination or anything of that kind, it would be treated in the same way.

Mr. LEVI. Well, I would not be opposed to that. I don't know what the consequences of taking that kind of a position would be in terms of the extension of the act. Obviously, it is a point well taken, but I would want to consider how one would apply that in making recommendations on a matter of legislation.

Senator THURMOND. And then if the law at that time applied to the previous general election figures, which were in 1964; the law was passed in 1965, wouldn't it seem logical that it apply to the previous general elections statistics year, which would be 1972, the last general election?

Mr. LEVI. Senator, that is a kind of policy argument which can be made, and Congress certainly would have to consider. I suppose the opposite side of it would be whether a kind of stability has been established and whether there would not be changes which would be regarded as going backward and so on and so forth, and I think that is a matter which would have to be debated in terms of extension of the act.

Senator THURMOND. Now, my State came under the act because it was alleged that fewer than one-half of the citizens who registered actually voted, and I believe Virginia for the same reason. I understand in the last election probably Virginia voted more than half of those registered. I am not sure how my State voted, whether it did or not. But it seems to me in any event, regardless of what States are affected, that the latest figure should control rather than going back to 1960 or 1964 or 1968 or some old figures, if the idea is to determine what is being done now, what the States are doing now and not what they did maybe 10 years ago. In other words, if you want to relieve discrimination, don't you want to do it wherever it exists, and where it is existing now or recently rather than what happened 10 years ago which may have been overcome? Doesn't that make sense?

Mr. LEVI. Well, it is certainly something that I would like to consider, but I think it is a legislative argument, and I am not quite sure how much effect to give in response to the feeling that one has to look at these things over some period of time and not just in the last few years. I think it is something that ought to be done.

Senator THURMOND. Well, would you give this—if you are confirmed here—would you give this careful consideration?

Mr. LEVI. Yes; I would.

Senator THURMOND. And determine what would be fair and just?

Mr. LEVI. I would, although as I say, I'm not sure that the President hasn't made a decision on the point.

Senator THURMOND. Well, I was talking to the President today. I was in the White House today. And I think you would find that he would not object to all States being treated alike. So if you get a chance, you talk to him.

I presume you believe that the people of all of the States should have equal opportunities and equal rights and be treated on the same basis?

Mr. LEVI. Yes; I do.

Senator THURMOND. I do not think I have any other questions, Mr. Chairman.

Senator HART. Has the Senator from South Carolina concluded?

Senator THURMOND. Yes.

Senator HART. Thank you very much.

In view of the lateness of the hour and our desire to accommodate a distinguished witness who would find it difficult to be here tomorrow, I will ask you quickly these questions in the area of antitrust, and I will stick right to my text.

A writer, in describing you, said that you had acquired the interesting trait of being able to probe without arousing antagonism. I think that is a great trait, but there are some situations where you cannot escape arousing antagonisms, and if you are going to be a standup Attorney General, that is certainly one of those places.

If, as in the ITT affair, a President of the United States were to order you not to prosecute a case that you felt worthy of prosecution, at the risk of antagonizing him, how would you respond?

Mr. LEVI. Well, I don't think my response would be based in any way at all on whether I though I was antagonizing him or not.

I must say that John Gunther was very kind. I did not realize my career was bereft of antagonisms. I would not worry about that part of the problem.

What I would try to determine and would wish to discuss with the President is whether the position which is quite proper for a President to have, was taken on the basis of how he felt and how the Sherman Act or the Clayton Act ought to be interpreted, and therefore was on a basic policy of the law proper, or whether it was based on something else. And I would make my views known, and I don't suppose I would think that I would antagonize him by making my views known because I would assume I had been brought down here to make my views known, but if it does antagonize, that won't be the first time I have antagonized someone, and one does not wish to antagonize the President of the United States.

Senator HART. How would you respond if he was talking to you about a case that you though should be prosecuted?

Mr. LEVI. Well, that would be a case, whether I agreed with him on principle or not, and whether the reason for not prosecuting it also itself also raised a matter of principle.

But if the President of the United States says that look, I have thought about this a great deal and I do not believe that the direction of antitrust enforcement should be, let us say, against conglomerates, which seems to me to be a possibly reasonable position, I see no reason why the President of the United States should not be able to take that position.

Senator HART. What if you thought it was unreasonable?

Mr. LEVI. Well, if I thought it was a very serious matter, as I said before, if it was not only unreasonable but really was an impairment to the standards of proper law enforcement, why then I would try to make my point, and if it was terribly serious, as I've said many times

before, I would quit. I don't think I would want to quit in a showboat kind of way, but I would quit.

Senator HART. You would resign, and you might or might not explain why?

Mr. LEVI. Well, I certainly would explain to the President. I think it is a highly theoretical question. What I am trying to say is that I don't think it is proper for an Attorney General to say that he is the sole person to decide, as against the President, the proper interpretation of the Sherman Act and the Clayton Act and related statutes. The history of our country is, as you know, that the Presidents have been—President Taft was very active in promoting the prosecution of the Sherman Act. So let us turn it around, a President might feel that the act should be enforced in areas where I might be or the Assistant Attorney General might be lukewarm about it.

The President is the President, and this could be an important part of his responsibility, and I would bow to that. I think the suggestions about the ITT case really are quite different because the implication there is that something else was involved, and I really don't want to go into that, but it was not just a question of interpretation, although one can say that the ITT consent decree could be based or perhaps was based on a reasonable interpretation—you may not agree with this—of the antitrust laws.

Senator HART. Well, you remind us again, it really isn't so problematic, although until we had the tapes played we might well have thought it problematic. It happened. It happened in real life, and the then Attorney General was so convinced that the action that he Department was seeking to undertake was important and right that he told the President through Mr. Mitchell that he would quit if he had to follow that line.

Mr. LEVI. Yes. Well, my point is that I do not think matters of that kind are properly followed by an order, do this or do that. I think where you have a difficult problem, the direction—an important direction of the Sherman Act and the Clayton Act, this is the kind of matter that ought to be talked out, and that would be my approach.

Senator HART. I wish to God it was not so late, and there are so many other things around here you have to do.

I think I understand why you urged that we not take an absolute position if we were the Attorney General that the Chief Executive ought not have and does not have an appropriate place in the development of what amounts to part of his economic policy, but he cannot have a place in directing the Department of Justice that it shall or shan't enforce the laws. Some of these laws are criminal laws, and that is really what I am getting to.

Mr. LEVI. And if you put it that way, the answer is quite clear. So perhaps we should let it go at that. I am just saying that there is a policy judgment with respect to the interpretation of the Sherman and Clayton Acts, and related statutes, and I would not want to say that a President, particularly one who has an economic program which includes the antitrust laws is barred from making his influence felt on the policy level. I would be very uncomfortable making that——

Senator HART. But we do agree that even the President of the United States cannot direct his agents to ignore the violation of a criminal law?

Mr. LEVI. Yes; I understand that.

Senator HRUSKA. Would the Senator yield on that point?

Senator HART. Yes.

Senator HRUSKA. Suppose the situation were reversed. Suppose the President called you up and said now, Mr. Attorney General, you file a case against Mr. ABX of New York City. What would your answer be?

Mr. LEVI. I think—it is the kind of case I was trying to put before—I think my answer would be, I would be glad to look into it and to see whether there has been a violation of law or a reason for filing of that case, and I'll get back to you with my best judgment.

Senator HRUSKA. Suppose he told you he was not worried about details, he just wanted results. He wanted you to file a lawsuit. What could your answer be?

Mr. LEVI. My answer would be that that is the kind of administration which I had not thought I had been asked to be a member of.

Senator HRUSKA. A filing of a case depend on the circumstances, and the facts, doesn't it? Are there facts justifying the filing of the complaint? That is the converse of the situation posed, it would seem to me.

Mr. LEVI. Yes.

Senator HART. Whichever side of the coin, or whichever side of the glass we look at this, if the President called you and told you not to do something which you regarded as required for the enforcement of the Federal laws, or asked you to apply sanctions or seek to apply sanctions against a citizen or a corporation that you felt would not be supported by the laws, you would respond negatively in both cases?

Mr. LEVI. Yes. As I say——

Senator HART. And would you—you say you would not showboat it—would you feel any obligation to tell the country that the President was seeking to abuse the power?

Mr. LEVI. Well, yes, if I thought there was an intention to abuse the power, of course I would say so, but of course I do hope and believe that it is quite theoretical.

Senator HART. Well, we all voice that hope, right across the board, that power shall never be abused hereafter, but humans are humans, and time passes and attitudes change, and we may be back where we started. That is the reason for, I think, the legitimate reason for keeping alive this part of the lesson of Watergate.

You have already indicated that it is very likely that an Attorney General and a President will discuss the role of antitrust in our economic programs. We are in a time of mounting concern about the ability of our industrial sector to perform in a manner most conducive to the public interests, and it will be your responsibility to decide to what extent, if any, antitrust might be used to improve economic performance.

Your predecessors in office have determined that at least with respect to IBM and to ATT, improved performance would result from their competitive restructuring.

Would you as Attorney General support the antitrust suits in these two cases?

Mr. LEVI. Well, let me give you a quick answer in several parts. First, the answer is yes. Second, the statement of conflict of interest which has been filed with the committee shows that I will have to disqualify myself from IBM and as to ATT I have a son who is an

associate in a law firm in Chicago which represents ATT. They tell me that as soon as there is any statement about the possibility of such a position for me as now under consideration, that he is removed from any cases dealing with the Department of Justice. I would have to carefully weigh the question as to whether I am disqualified with respect to ATT, but excepting those two points, I have given you the answer that certainly it would continue.

Senator HART. Attention has been called to some of your writings. You several times have called for large-scale reexamination of the antitrust laws. With Professor Director, you authored a piece on antitrust for Northwestern Law Review back in 1956, and you collectively stated: "We believe the conclusions of economics do not justify the application of the antitrust laws in many situations in which the laws are now being applied." And in that piece and in others, you seem to take exception to several Supreme Court decisions which have held as unlawful anticompetitive practices, which include the following: tie-in arrangements in the IBM cards case; block booking, Paramount Pictures; joint buying power; exclusive dealing agreements, Standards Case; resale price vertical measures, Du Pont to GM; and monopoly obtained through exclusionary practices in Alcoa. And moreover, you have indicated that certain price-fixing agreements and price information exchange arrangements which have been held by the Supreme Court to be unlawful per se should be reconsidered.

In short, your exemptions would seem to cover just about the entire field of antitrust, from the Sherman to the Clayton Act, section 5 of the Trade Commission. What remains of the antitrust laws that you might deem appropriate to enforce as Attorney General?

Mr. LEVI. Well, let me first express my nonarrogant opinion that the articles to which you refer are pretty good articles.

Senator HART. I hoped you were going to tell me that my summary is not.

Mr. LEVI. No. I was going to say that I do not assume that you really want to discuss those articles, but that you really are asking for my point of view on the application of the antitrust laws to various practices.

Senator HART. These specific practices.

Mr. LEVI. I believe in the antitrust laws. I think they are very important. I think, contrary to what some other people have thought, that on the whole they have been very effective. During a period of inflation, I think the antitrust laws are of added importance, because the problem of inflation involves either the monetary supply or an increase in productivity, or both; and the antitrust laws, during such a period, can be very important in terms of increase in productivity. Therefore, it seems to me that they are an appropriate part of the President's program, economic program, during this period.

I believe, and I've always believed, that certain collusive practices, such as price fixing, division of territories, even tie-ins, should be unlawful—actually illegal per se. But the reason for that is that one is searching for those practices which reduce production through agreements, or what amounts to agreements among competitors; or does it the other way around through the raising of prices. There is nothing in those interesting articles which I could discuss which suggests that that should not be done, as I read them.

It is possible, also, that a monopoly position of a firm may have resulted in the cutting back of production and the raising of prices, and therefore a lowering of productivity; and therefore—this is not that the law changes during the time, but this is a particularly important matter during a period when one is worried about inflation. So, that is my attitude, and I think it really answers the questions that you have asked.

Now, the articles are quite different. The articles ask, are the forms of economic justification and the proliferation of the intervention of the antitrust laws in various areas justified by the economic theory which is used? And I must say that Mr. Director and I, either correctly or incorrectly probing as we thought we should, decided that in many cases, one could not justify the actions taken on the basis of the economic theory used. I do not—I should quickly add that I do not think economics are everything. I don't think there has been such a perfection of economics that, even if economics were everything, it could determine all of these questions. This is not just a question of economics. This is a question of law. This is also a question of the society, and how it views the inability of a competitor, for example, to get into an industry where he can't get into it because there is a tie-in arrangement, which is built on a monopoly position someplace else. That kind of inquiry, I insist, is good for prosecutors of the antitrust laws, and it would be good for courts to think about, so that we just don't—and I know, certainly, I speak to Senator Hruska and Senator Hart that both of you are very familiar with this area. The one problem in the Sherman Act and the Clayton Act is the repetition of phrases which over time lose their content—and it seems to me we have to go back and ask, what do they really mean? And that is what I was trying to do in those articles.

And, as I say, many articles which I have written, I would say I am ashamed of. Those, I do not think I am, and I think that kind of thoughtfulness wouldn't even hurt for a prosecutor of the antitrust laws.

Senator HART. I'm going to try to get an answer here so that we can move on, and it is a followup on your interesting and scholarly answer.

Mr. LEVI. I'm sorry I took so long in answering it. I didn't mean to.

Senator HART. What you are saying, or what you wanted us to understand in that Northwestern law article, is that while you would agree that block booking would be objectionable, make sure that in any set of facts, it is really what we were talking about when we said block booking was bad, with respect to all these other things?

Mr. LEVI. That's right, and let us see whether we have really looked at the situation, and know what we are doing, and not have an enforcement program that just spreads all over the map, on the basis that the more cases you bring, the better the program is.

Senator HART. It is, of course, only in antitrust matters which the scrutiny of the Attorney General is required before the several divisions can act in the Department of Justice. Last summer, Attorney General Saxbe announced a change in procedure. He would permit antitrust cases to be filed at the discretion of the Assistant Attorney General in charge of the antitrust division, and without the approval of the Attorney General. Have you given thought as to whether you considered formalizing Mr. Saxbe's policy in this regard?

Mr. Levi. Well, I thought about it. I don't know what my answer is. I think—well, to put it this way, my answer is not that I am necessarily going to commit myself to that policy. As I have said before, I believe in antitrust laws. I think they are extremely important. I do not want to tie up the antitrust division so that it cannot perform. I think that is a very important area, but if I am to be an Attorney General willing to antagonize people, then it seems to me I had better exercise some kind of knowledge and supervision over that area, as well as some of the other touchy areas; and I think it becomes a matter then of administration, because it is not good, obviously, for the Attorney General to be so tied up on matters of detail that he can't think about the things which may be more important. But I think, in terms of—I would want to be sure that in terms of the general direction of the antitrust policy at this time, particularly, as I have said, because I think it is an important part of an economic program, that I am exercising some kind of supervision. If I am not competent to do that, I am not competent to be Attorney General.

Senator Hart. Well, would it follow that every division should be subject to the same rule for the reasons you were citing?

Mr. Levi. Well, it may well be that there has to be some way of making sure that the important matters, and not the unimportant ones, come to the Attorney General; and I will have to feel my way on that, and see what the procedures are. But I do not want to commit myself to stepping aside, really, on the area which it just happens I know rather well, and where I have strong feelings that the area is important; and that I would want to have some help, I would hope, and also have some guidelines in how it is carried out.

Senator Hart. That you would want to be sure that certain matters would be regarded of such nature as to permit the Departments to move without clearing it with you, but in important matters you feel that it is desirable that the——

Mr. Levi. I don't want to make that commitment at this time, because I feel that commitments of that kind become quite ironclad, and automatic; and they are difficult to change. I think one has to establish and I assume one can, an atmosphere of reasonablensss and understanding as to direction and as to what is important and what is not. Obviously, one of the things that has happened in the antitrust field, and I don't want to take too long in answering this, is that the extension of the interstate commerce power of the Federal Government has been such that all kinds of little cases which previously would not have been under the Federal authority are now under the reach of the antitrust laws.

So that that does present a problem in terms of the overseeing, the proper overseeing, of the enforcement policy. But I do not want to be in a position where I am barred from seeing what is going on. I do not see how I can take the position which I have that I would draw, and I'm sure you agree with this, Senator, that I would draw up guidelines in the very important area of records and surveillance on Congressmen and beyond with the working of the Director of the Federal Bureau of Investigation and say that when it comes to the antitrust division I have some automatic bar from that same kind of guidance.

And I would hope that human nature, or that even the way human nature is, that that guidance would be welcome and I would learn from it. So I hope that guidance would not be unreasonable.

Senator HART. I do not want to put you in a position and would apologize if we happen to get you in a position where your ability to supervise and administer the Department would be lessened by reason of some commitment. But to go directly to the reason for asking the question, I take it that Bill Saxbe made the decision, as he announced last summer, to let the Antitrust Division file as the other divisions without clearing them, that he felt that—well, he must have had some good reason for it—maybe he felt the mood of the moment was that if he brought antitrust through his office, it was the only division that went through his office, the suspicion was that antitrust had such high political volatility that we had better let the appointee make the decision, and that is really what we in Congress and you in the Department, I am sure, were trying to avoid.

Mr. LEVI. Yes, and I'm perfectly, as I said, willing to take into account the way to approach this, but I would not like to say this is an area about which there are so many suspicions because of prior happenings that the way to protect myself is to remove myself from them. I really don't see that that would be a proper course.

Senator HART. The growth of the merger movement in this country has been of some concern to a great number of economists and jurists. Am I correct in my interpretation of some of your writings that you do not necessarily see anything wrong with growth through acquisition of competing companies as compared with growth through internal expansion?

Mr. LEVI. I think my writings have indicated that there are some acquisitions where the percentages are quite low, where it would be difficult to show an economic effect. That's what the writings have said, and they have gone on to say that I can understand and rather predicted that the law would develop in the direction which it has where there has been a kind of automaticity to it under the Clayton Act.

But the fact of the matter is that acquisitions, growth through acquisitions is much more suspect in general than growth without acquisitions, growth without acquisitions being more or less the type of the Alcoa case.

So that I guess to try to shorten the answer, and I apologize for this, I think that is an incorrect interpretation of my view. I do think that growth through acquisitions is more suspect, and of course that is the law.

Senator HART. Well, I am glad to hear it. How should I read your writings as to whether you see any necessary connection between high industry concentration and high prices?

Mr. LEVI. Well, you see it is possible during the kind of period we are now in, and this is one of the problems about using economic theory and data, it is quite possible that we will discover that the high concentration has held prices down. That is quite possible.

So one has to ask the next question, well, what about that? So what? And I don't know what your question assumes on that. I'm just saying that if we assume that breaking up certain industries will automatically result in a lowering of prices, I think the experience has shown that it may very well have the opposite effect.

Now I believe this is the knowledge, although I think economic theory and economic data is not perfect in these areas, and I keep repeating that. But I don't know what follows from that.

Senator HART. If I put it this way, do you believe that antitrust enforcement could be an effective weapon against inflation, you would say yes?

Mr. LEVI. I have already said that and I think it can be a very important one: yes.

Senator HART. You are not sure whether in the case of the concentrated industries the data would support the proposition that it has maintained a higher price level than a restructured industry would have produced?

Mr. LEVI. What I'm trying to say is that my recollection of the data and the writings on it would indicate that it is very likely that during periods of this kind prices tend to be held down in the more concentrated industries. That is not the popular view, but I think that is probably what can be shown.

Senator HART. If it was another period of time and the popular view was that they tended to keep prices above what a restructured industry would produce, you would proceed in what fashion?

Mr. LEVI. Well, I think you are asking about a monopolization or attempts to monopolize. I think that has to be taken on a case-by-case basis and one has to look at the specific situation in that industry. And really, all I'm asking is let us not approach it with a variety of notions which are based, I think, on economic facts that the antitrust division would find it could not prove to be true, where one does not get so many cases as one used to get where there was 90 percent control or something of that sort. There are some tough decisions, obviously, about concentrated industry.

And I know, Senator, that you have thought of a bill, in fact, you have a bill that might approach the problems. The problem there is that the kind of an approach, it doesn't seem to me, is going to have much of an effect during what we at least hope are the years of inflation and recession. That perhaps is down the line. It is a difficult legislative problem and a difficult legislative judgment.

I think—I feel I think the antitrust laws are contrary to what many people think have been a success and I think a case-by-case approach is the best way to handle it.

I have lived through periods, when I came down to the Department of Justice in 1940, the assumption was that the antitrust laws were a failure and that some other form of more rigid control had to be proposed. Robert Jackson and Thurman Arnold really had as their program the attempt to see whether one could revitalize the Sherman Act. I was a part of that program. I think that in those days we believed a lot of things that I don't believe now, but I have not changed my mind that the Sherman Act is extremely important, that it has been successful, that it should be applied in areas of monopolization or attempts to monopolize and that it should be applied particularly during this period where there are collusive arrangements which curtail production at a time when productivity is required.

Senator HART. Finally, if it was demonstrated, as you say, that the facts are as follows, that a handful of firms in critical industries such as energy and transportation were able to use their market power to

preclude the development of rival industries' commodities such as alternative energy sources, would you recommend antitrust action as a correction?

Mr. LEVI. Well, I think the question really is would I recommend it if I saw within the framework of the development of the law, which is a kind of common law development, although based on statute, that it was unlawful. If it was, I would recommend it.

Senator HART. Would that set of facts indicate to you something that offends existing law?

Mr. LEVI. Well, I think it is not sufficiently complete because one would have to ask what is the alternative, to what extent was there an option in terms of the conduct, and these questions can become very embarrassing questions, as you know, Senator, embarrassing only in the sense—I don't want to be misunderstood—in the sense if one is being a lawyer about it and enforcing the law in such a way that it is both fair and makes sense.

If you have a few firms that appear to be acting together just because they are a few and they have not sponsored new developments, one has to go further and ask, why haven't other people sponsored new developments? Where are the controls? Where are the bottlenecks?

Now this is really a search for the monopoly points and that is what I think you would have to do.

Senator HART. I respect your hesitancy to jump flatfootedly to a yes answer to a very short question such as I have asked, but I would like to interpret your answer, that if some of those additional considerations were fed in and the evidence supported those additional elements as part and parcel of the influence of these handful of firms, that you would feel that corrective action was required?

Mr. LEVI. I think if one could find that through an antitrust remedy one could greatly encourage—would remove monopoly and restraints—and would greatly encourage the development of new sources of energy, that would be a great thing.

Senator HART. I hesitate—do you have any further questions, Senator Hruska?

Senator HRUSKA. Not at this time. Maybe tomorrow.

Senator HART. I hesitate to use this expression, that it is due to the lateness of the hour, but there are some additional questions that I will submit to you in writing to be incorporated in the record.

I hesitate, in case anybody saw the same TV show last night that I saw. It was really a delightful treatment of what Congress does when it does not want to do very much more. But we do intend to read those answers.

It is my understanding that you are to return at 10:30 tomorrow morning.

We have one additional witness.

Thank you very much.

Mr. LEVI. Thank you.

Senator HART. The testimony to be received on behalf of the American Bar Association will be presented by a very distinguished lawyer and former judge, one who knows the Department of Justice intimately. We have had him here before and are always the better for listening to him. We welcome Lawrence E. Walsh.

TESTIMONY OF LAWRENCE E. WALSH, PRESIDENT-ELECT, AMERICAN BAR ASSOCIATION

Mr. WALSH. Mr. Chairman, I greatly appreciate your courtesy in hearing me this evening. The long day that you have put in makes me doubly grateful for this favor.

I do not intend to read my statement. It really duplicates much that was said by Senator Percy and by Senator Stevenson.

I simply want to say without qualification and in strong and simple language that speaking for the almost 200,000 members of the American Bar Association through the action of its executive committee and board of governors, we unqualifiedly support Mr. Levi for this high office.

Most of us are private practitioners and we believe that Mr. Levi will be a true ornament to this profession, and we look forward to the time when he epitomizes our profession in the public eye. The Attorney General is the leader of the profession in this country. He is the lawyer most on display, and we feel that Mr. Levi will be ideal.

Now, if I had any doubts before today, they would have been dissipated by this remarkable display. I only wish that there could have been a bigger public audience to see the work of this committee and to hear the responses of the nominee to these well-prepared, highly informed, incisive questions. Mr. Levi's answers, of such sweeping scope responded to with such candor and forthrightness and at times profundity in an extemporaneous fashion would, I think, be most reassuring to the people of this country.

This committee is the watchdog of the Senate, and in the confirmation proceeding, of course, the watchdog for the public, and I cannot help but believe that the people of this country would have been impressed by this display and the thoroughness with which it was done. It makes absolutely surplusage testimonials by those who come to add a little bit, and I am not going to take the time of this committee to do it.

I can only say, speaking personally, that I have had the pleasure of working with Dr. Levi for over 10 years in the American Law Institute and on the Council of the American Law Institute. The same kind of temperate, decent response which you heard here today has been his practice throughout that period: never the one to speak first, or at least rarely the one to speak first, always listening with courtesy to the conflicting points of view, very often coming forward with an analysis which would make compromise or conciliation possible.

It seems to me that we will be most fortunate if we can have this man as a point of contact between this committee and between the Senate and the President in the development of these most important areas which you have dipped into today.

The dialogue in the last hour has been fascinating as I have listened to this expert interrogation and response in this area of the antitrust laws, and indeed our economy in general. I simply would like to let it go at that, to say how delighted we, at the association are, that the President has nominated Mr. Levi, and how impressed and how respectful we are of the performance of this committee and his testimony before it.

Thank you.

[The prepared statement of Mr. Walsh follows:]

STATEMENT OF LAWRENCE E. WALSH, PRESIDENT-ELECT AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Committee: I am Lawrence E. Walsh of New York, and I am appearing as President-Elect of the American Bar Association. The President of the Association, James D. Fellers, regrets that he cannot be here due to a series of previously scheduled engagements on the West Coast, and he has asked that I appear in his stead. The Association, through its Board of Governors, strongly commends the President on his nomination of Edward Hirsch Levi to be Attorney General of the United States and urges that the Senate confirm this nomination. I offer for the record the resolution of the Association's Board, a copy of which I have attached to this statement.

Mr. Levi is singularly well-qualified to serve as Attorney General. He is an outstanding representative of the legal profession, to which he has devoted most of his professional life. His more than twenty years of service on the faculty of the University of Chicago Law School and his publications in the legal field attest to his high level of legal scholarship. He has also served as an attorney for the Department of Justice from 1940 to 1945, as Chief Counsel to the Antitrust Subcommittee of the House Committee on the Judiciary in 1950, and as a consultant to the Department of Health, Education and Welfare in 1966–67. He has served for many years on the Council of the American Law Institute and the governing boards of several other major legal organizations. He is currently a member of our Association's Task Force on Advanced Judicial and Legal Education.

Mr. Levi's administrative abilities, demonstrated as Dean of the University of Chicago Law School for twelve years, Prôvost of the University for six years, and President of the University for six years, are widely recognized as outstanding. During the widespread university campus disorders of 1968, his handling of problems on the University of Chicago campus was greatly admired. Without police help, but with complete firmness, order was restored.

Finally, but certainly not of least importance, Mr. Levi is a person of the highest intregrity, repute, and independence. It is an appointment of utmost distinction and will be a new inspiration to the fine career lawyers of the Department. Mr. Levi will bring to the Attorney Generalship demonstrated qualities of leadership, ability, and character. In our judgment Edward Hirsch Levi will significantly raise the level of professionalism in the Department of Justice, and restore public respect and confidence in the administration of justice.

Thank you.

STATEMENT OF THE AMERICAN BAR ASSOCIATION BOARD OF GOVERNORS

The American Bar Association, through its Board of Governors, strongly recommends that the Senate of the United States approve the nomination of Edward Hirsch Levi to be Attorney General.

Mr. Levi is a most gifted and distinguished member of the legal profession. As President of the University of Chicago, and as Dean of the University's law school, Mr. Levi has demonstrated scholarship, integrity, and outstanding administrative abilities.

The Department of Justice is in need of the high quality of leadership that Mr. Levi would bring to it. Confirmation of a person of Mr. Levi's caliber, a man with wide government experience, yet without active political involvement, would go a long way to restore public confidence in the Department and in the administration of justice generally.

Senator HART. Judge, to those who have heard your testimony, it is clear that yours is not a tentative endorsement. I think that even the reader of the record will sense this is not a tentative endorsement.

Mr. WALSH. I would not want to be ambiguous.

Senator HRUSKA. Mr. Walsh, you have indicated in your resolution or the recommendation of the board of governors that Mr. Levi is a man with wide Government experience, yet without active political involvement.

Is the absence of active political involvement good or bad?

Mr. WALSH. Well, Senator, I think at this time, it is good. It does not mean that it would always be good in the appointment of an Attorney General.

The Office of Attorney General encompasses many functions. No one man can know them all to perfection, and the President must choose, subject to confirmation by this body, whether or not the particular group of capabilities selected at a particular time are the best group of capabilities. At this time, after the career men in the Department, these fine professionals, have carried this Department through this difficult period, I think it would lift their morale. I think it would increase the respect of the country for the Department if the nominee is drawn from nonpolitical activities.

At other times it might be quite different.

Senator HRUSKA. Does that mean that political involvement is disqualifying?

Mr. WALSH. No, sir, not at all.

Senator HRUSKA. We witnessed, did we not, an exemplary job by Mr. Jaworski as Special Prosecutor? We witnessed that on the part of a man who was active politically?

Mr. WALSH. Very true, sir.

Senator HRUSKA. He was a Democrat and represented President Lyndon Johnson personally and politically in many battles in the courts, and he did an excellent job, did he not?

Mr. WALSH. That is correct.

Senator HRUSKA. We are glad that you came here to make this testimony. Thank you, sir.

Mr. WALSH. Thank you very much, Senator.

Senator HART. Thank you.

We recess to resume at 10:30 tomorrow in this room.

[Whereupon, at 5:35 p.m., the committee recessed, to reconvene at 10:30 a.m. the following day.]

NOMINATION OF EDWARD H. LEVI TO BE ATTORNEY GENERAL

TUESDAY, JANUARY 28, 1975

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:35 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Bayh, Tunney, Abourezk, Hruska, Mathias, and Scott of Virginia.

Also present: Peter M. Stockett, Francis C. Rosenberger, Douglas Marvin, and Hite McLean of the committee staff.

Senator ABOUREZK [presiding]. The committee hearing will come to order please.

Dr. Levi, I would like to ask you first of all, if you have had an opportunity to familiarize yourself with the Indian trust responsibility of the Justice Department?

TESTIMONY OF EDWARD H. LEVI—Resumed

Mr. LEVI. Well, I really haven't. I realize the responsibility is there, and I realize also that there is something of a conflict situation, and it is something that I am concerned about, but I have not had the opportunity to look into it in any depth.

Senator ABOUREZK. I wonder if I might be able to explore just briefly then, your general attitude toward it. Assuming, as you know, the responsibility of protecting American Indian trust rights—land and water rights—exists in the Justice Department under statutory authority. The problem has been and continues to be that whenever there is a conflict between two Government agencies—for example, between the Bureau of Indian Affairs and some other Government agency—the Justice Department has in many cases undertaken to represent every position except the Indian trust rights. To remedy that situation, legislation has been introduced to establish a separate Indian Trust Council Authority, which would have the sole responsibility for protecting Indian trust rights.

Last session of Congress, the Justice Department indicated formally that it wanted to clear out of the Indian business. The Interior Department, testifying on behalf of the administration on the bill, said that it wanted only very light funding for a very small staff. The problem that arises then, is that if Interior has only a small staff, and Justice gets out of Indian cases altogether, including nonconflict cases, then

Indians will be worse represented than they are now, which is extremely bad.

Now, with that preparation, my question is, would you favor the Justice Department staying in the Indian business to the extent it will represent the Indians in cases which do not conflict with other agencies of Government?

Mr. LEVI. Well, I think so. I think it is something that I ought to give further study to. It is intolerable to have the Justice Department in a position where in effect it is a trustee and is not discharging that responsibility. So we have to find some solution for this. And whether the solution is through the appointment of special counsel in those cases or removal, or to have some separate kind of agency carry it, I don't really know. That is something I would have to study, and I repeat that I think it is intolerable to have the Department be both the trustee and involved somewhat on the other side, and then trying within itself to solve problems which should be decided in litigation.

Senator ABOUREZK. Well, the ideal situation would be, at least under present attitudes of the administration, that with a small trust counsel staff the Justice Department would almost have to continue to handle all cases where there is no conflict. What I am simply asking is, would you support that concept?

Mr. LEVI. Well, I would, provided I was convinced that that would be effective representation, and that the conflict situations would really be handled with a real discharge of the trustee responsibility.

Senator ABOUREZK. It would be handled by a Trust Council Authority.

Mr. LEVI. Well, I would want to be sure that that meant it was really going to be handled and not yet just thrown somewhere else and not handled.

Senator ABOUREZK. Thank you.

I would like to turn now to the subject of antitrust lawsuits and antitrust action that you might be persuaded to take. I don't recall anyone questioning you yesterday on your attitudes toward that, and if they did question you, I missed it. I wonder if you might tell the committee now how you feel about anticompetitiveness and about your antitrust responsibilities in general.

Mr. LEVI. Well, I do have to say that I tried, perhaps in too great length, to say something about that yesterday late in the day.

In brief, I believe very strongly in the antitrust laws. I think that the situation at the present time during an inflationary period makes it very important that the antitrust laws be particularly enforced where there are collusive arrangements, anticompetitive arrangements, among firms which may reduce productivity, since one of the problems in an inflationary period is how do we increase productivity. So my view is that the antitrust laws have a high priority, particularly in the area of where there are price fixing arrangements or production control arrangements as between firms, and of course, one has to take on a case basis problems of concentration which result—which are in effect monopolizing or attempts to monopolize.

Senator ABOUREZK. Do you believe, for example, that the oil industry, our domestic oil industry, has shown too much concentration? Do you believe that there ought to be antitrust action against any segment of the oil industry?

Mr. LEVI. Senator, I really don't think that—I guess I have to say I really don't want to answer that question, because I don't think it is really suitable for me to point a finger at unknown offenders and say I think civil or criminal action should be taken against them. I think that is a problem that will have to be taken up on a very careful basis. I am sure that the Department of Justice and the antitrust division has been concerned about such matters, because I think they have been concerned about it for probably as long as I can remember, going back to the period of time when I was there. I think one has to look at those situations very carefully. I would prefer not to make a statement which says that I think that an industry is violating the antitrust laws without a very, very careful look at what the facts are.

Senator ABOUREZK. Without singling out any industry, do you think that, for example, the oil industry warrants investigation as to whether or not it is too large, or if it is anticompetitive because of the concentration of companies in the oil industry?

Mr. LEVI. You see, it is such a complicated question, Senator, and I don't want to oversimplify it in trying to answer it.

In one sense there is a great deal of competition in the oil industry.

Senator ABOUREZK. Which sense is that?

Mr. LEVI. Well, if you look at the number of firms which are involved—I have forgotten now the number of the major ones, but at one time it was around 22—and I have to admit that I'm trying to avoid making a judgment on an industry, I realize because of the energy problem, this is an area where many people have great concern as to the application of the antitrust laws, and obviously that is something which, I am sure, is being looked at and has to be looked at. But, I don't want to make a prediction as to whether this or that kind of a case is going to be brought. I think that would be wrong.

Senator ABOUREZK. Well, my question was whether you think it warrants investigation.

Mr. LEVI. Well, I am sure that with respect to the problems of the energy situation, the antitrust division ought to be vigilant not only with respect to oil, but any other sources of energy to make sure that the restrictions on competition are not impeding the development of new energy sources.

But I really do not want to single out one segment and say that this is something which is now, if I am confirmed, to be looked at. I take it, it's probably being looked at right now.

Senator ABOUREZK. Is your answer that you are against investigation of the oil industry?

Mr. LEVI. No, no.

Senator ABOUREZK. What is your answer?

Mr. LEVI. My answer is that I would think that particularly during this period any important segment of industry having to do with the development of energy or energy sources ought to be looked at in terms of the observance of the antitrust laws.

So, I am not saying that any segment should be exempt from being looked at. I'm trying to avoid, however, saying that I have made a judgment that a particular segment should be picked out to be particularly looked at at this time, because that carries the implication of a judgment made by me without the kind of relevant look that I think should be done.

Senator ABOUREZK. Dr. Levi, I am sure you are aware that the 20 top major oil companies in this country control and own 93 percent of all domestic oil reserves; and I believe it's the top eight major oil companies who own and control 64 percent of our oil reserves. Couple that with the fact that the markets around the country are fairly well divided.

If you want to talk about 20 oil companies competing with each other, that really isn't competition at all because the markets are fairly well divided throughout the country. It is kind of like supermarket chains. I don't have any knowledge of supermarket chains to be discussing them, but they seem to know without discussion where their best shot is at.

It's the same way with the oil companies. It would seem to me that to any Justice Department that is concerned about concentration and what has happened in the last 2 or 3 years in the energy field, the oil industry would warrant quite a thorough investigation. If the antitrust laws are not sufficient, then it would seem that, along with Congress, the Justice Department might recommend antitrust laws that would take care of that situation.

Therefore, am I to understand that you favor an investigation into this industry since you said you——

Mr. LEVI. What I said was I would not start off with the notion that any important industry, such as oil, would be regarded as exempt. Of course, as a matter of fact, the Federal Trade Commission has a suit now pending, and the only thing, Senator, that I'm really trying to avoid is, I do not myself want to use the kind of language which automatically condemns a whole industry by saying that if you take all of the units in it, they have, for example, 90-percent control, because this is really the kind of thing which you have to expect would occur.

If 22 firms have 90 percent, would that be much different than if 30 firms have 90 percent? I mean, at some point somebody is going to have—if you take all of the firms and aggregate them, you will get 90 percent. So, I think it is not really that kind of a problem.

The problem is whether within that structure there are monopoly points which have to be looked at and which are causing basic restrictions. But I am trying to avoid, because I just don't think it is good policy for me to make an announcement that I am going to, if I were to be confirmed, investigate the oil industry.

I assume, for one thing, it is under investigation. In fact, there is the Federal Trade Commission suit in any event, and I have no doubt that it will be investigated or it is being investigated. But, I have not given that kind of consideration to what the data now shows in a very complicated situation—a very complicated situation which is not only national, but international. And I guess I am being cautious because my own experience in antitrust enforcement goes back many years, and the oil industry has frequently been the subject of investigation and suits.

And these are complicated matters, and I just don't want to announce that, in effect, if I were confirmed as Attorney General, a case would be brought against the oil industry.

I also would not want to announce that it would not be.

I realize that is perhaps an unsatisfactory answer, but it does reflect my point of view.

Senator ABOUREZK. Well, I don't know how you are going to fit into this administration. They don't seem to mind announcing they are going to go to war over oil, but you will not announce whether or not the Department will go to court over oil.

You are going to have a conflict upon your confirmation.

Mr. LEVI. I'm not sure I understand what the conflict is going to be, but there may be conflicts.

Senator ABOUREZK. I wonder if I might ask you a couple of questions now about domestic surveillance. You covered that to some extent yesterday, I understand. And if my notes are correct from what you said yesterday, your statement was that it is important to have surveillance first if there is probable cause that a crime may be committed.

Is that an accurate representation of what you said yesterday?

Mr. LEVI. I believe so.

Senator ABOUREZK. And second, if the security of the United States is involved.

Now, with regard to surveillance, you are talking about not only physical surveillance of citizens in this country, but also electronic surveillance. Do you make a distinction between the two when you talk about surveillance?

Mr. LEVI. Well, I think one has to make a distinction in that the use of electronic surveillance seems to me to require very special protection, and the statute points in a direction which I am quite sure ought to be observed.

I think electronic surveillance ought to be only used when it appears to be essential, when other methods are not sufficient, when the danger is sufficiently great to require the use.

Senator ABOUREZK. You are talking about electronic surveillance?

Mr. LEVI. That's right. Now, the statute, of course, requires not only the approval of the Attorney General, or designated Assistant Attorney General, but approval of the court, and then leaves another area wherein there is presumably constitutional authority where it is a matter involving some kind of foreign involvement. And it is to that that I was trying to make the point yesterday that I am not certain whether it would not be desirable in that latter area to also require the approval of a judge.

I did comment that this is a matter upon which the Congress could legislate if they wished to, but I was trying to say that whether or not the approval of a judge was required, I thought that prior to that step it was important to have a judgment made at a very high level of the Government before that approval was asked for, and I thought that that perhaps would be more meaningful than the approval of the judge. But I was not certain about that, and so, I have not—I don't know whether I think that the approval of a judge should be required where there is foreign involvement. And I know that there are arguments both ways on that.

But in any event, I don't think that would be sufficient protection unless prior to that there was the same kind of deliberative judgment made which is required for electronic surveillance on domestic matters.

That was the position I was trying to set forth.

Senator ABOUREZK. If I could talk just now only with respect to nonforeign involvement; in essence, domestic surveillance. I'm talking

about electronic surveillance with the probable cause that a crime is being committed.

Mr. LEVI. Yes.

Senator ABOUREZK. You said that if the danger is sufficient, electronic wiretapping ought to be used. Do you consider gambling cases to be sufficiently dangerous to use electronic wiretapping?

Mr. LEVI. Well, I think the only way to get at the kind of organized crime situation may be through electronic wiretapping, and I think this would have to be looked at in a case-by-case scrutiny. And the point that I would make is that one realizes this is a very unusual step, and therefore one takes it very seriously, and it is not to be used really frequently. I think that we ought to try to communicate, perhaps more clearly than we have, how often in fact it is used. I don't think it is a desirable thing for citizens of the United States to feel that there is large-scale electronic surveillance if, in fact, there is not; and what I am advocating is not large-scale electronic surveillance, and I am told that there isn't. But I must say, I cannot be sure that I really have knowledge of it.

Senator ABOUREZK. You are aware that the LEAA is handing out wiretapping devices to local and State police departments all over the country.

Mr. LEVI. Wel, I may have been aware of that. I think I probably was not.

Senator ABOUREZK. You say most likely you were not aware of it?

Mr. LEVI. Yes.

Senator ABOUREZK. But that kind of activity has been going on, and most likely will continue unless the Attorney General puts a stop to it. That activity kind of does away with the argument that wiretapping is a significant event that has to be exercised with great care. If you are confirmed, what would your position be on the distribution of wiretapping equipment to local and State governments by LEAA.

Mr. LEVI. Well, I don't know what it would be, frankly. I don't know whether it is inconsistent to say that this is an important device which should be used in a limited number of cases under great protection. I don't know whether it is inconsistent to say that, and also to say, this is the kind of a device which can be given out for this purpose. I think I would have to look at it to make sure that one part of the activity does not, in fact, corrupt the other. But I do not see why those two actions would have to be inconsistent.

I certainly agree that I would not be in favor of saying that wiretapping should only be used where it is necessary, and in a limited number of cases, and where it has been thoughtfully approved; and at the same time have a system where it is thoughtlessly approved and used on a wide-scale basis which is not required. Obviously, I'm not in favor of that.

Senator ABOUREZK. I once heard the FBI Director testify that he was in favor of a warrantless wiretap in domestic political cases. He did not use the word "political," but I think the word he used was "domestic security," not with foreign involvement. With regard to political dissent in this country, do you favor or oppose the use of wiretaps on people who dissent politically?

Mr. LEVI. I think there are two implications, at least, in that question. One was the assertion that the Director of the Bureau was in favor of warrantless wiretapping in an area where, as I understand the interpretation of the Supreme Court opinions, a warrant would be required. So that I would really like to put that part of the question aside, because obviously one ought to follow the interpretations of the Constitution. Now, the second part of the question——

Senator ABOUREZK. May I interrupt? He said he wanted a law that would give him the right to wiretap without a warrant in domestic security cases.

Mr. LEVI. Well, he might want it, but my understanding is, under the Constitution, he cannot have it. So I would think that would really settle that part of it. That is where there is no foreign involvement whatsoever, as you have suggested. But then, as to political dissent, I think it depends on what you mean by political dissent: I don't see why there should be any surveillance at all of political dissent if that means that we are going to have surveillance over the first amendment rights, over the political views of American citizens. I should think that we would all be against it. If on the other hand, political dissent really is another way of talking about foreign involvement, then, of course, we are discussing something quite different.

Senator ABOUREZK. We're talking about no foreign involvement.

Mr. LEVI. Then I really do not see the necessity for it, unless one is really talking about that kind of dissent which involves the commission of a crime. That takes us back to something which is quite different.

Senator ABOUREZK. The statute provides for a warrant for wiretapping in the event there is probable cause of a crime.

Mr. LEVI. And I should think that it is very essential that that statute be observed. As I say, I see no justification for not observing it.

Senator ABOUREZK. Would you oppose any attempt, and would you as Attorney General be opposed to any effort on the part of anyone in the administration to attain a law that would provide for a warrantless wiretap in national security cases?

Mr. LEVI. I would be opposed to that, yes.

Senator ABOUREZK. What about changing standards of cause with which to obtain a warrant—it is now probable cause. Would you oppose or favor an attempt to reduce those standards down to reasonable cause?

Mr. LEVI. I think probable cause is a good phrase. I think it is important that we keep the words, so that we know that this is an unusual device, and that a case has to be made for the use.

Senator ABOUREZK. And so, you would oppose any attempt to reduce the standards; is that correct?

Mr. LEVI. Yes.

Senator ABOUREZK. I would like to turn now, just briefly, to the matter of the FBI maintaining files on private citizens, including Members of Congress; and I want to clarify what files we are talking about. I noticed yesterday you said there were several types of files. For the purpose of this discussion, exclude a file of letters received from a citizen or Congressman. I'm certain there is nothing wrong with keeping a file of mail received from a person whose name is on the file. I

noticed yesterday also that you questioned—you weren't really sure as to what the FBI ought to do with unsolicited information sent in to the FBI. As I understand it now—and I think your understanding is the same—the FBI maintains files, dossiers, whatever you want to call them, on people. The FBI claims that, on Members of Congress, it is unsolicited information in a great many cases, and in other cases, it is newspaper clippings and whatever. I never did hear you state your position on it. You talked about it, but I wonder if I might ask you: "Do you favor or oppose the maintenance of such files?"

Mr. LEVI. Well, I really cannot understand why the Bureau would be maintaining a file of newspaper clippings on Members of Congress, unless, as I tried to indicate yesterday, it was in the course of an investigation of a crime, or in the course of an investigation for appointment to an office. I cannot see any other justification for collecting information about Members of Congress, and for that matter about citizens, unless it is related to those two areas. So that whenever one raises this kind of extension of collection of material and investigation, and particularly when it relates to Members of Congress, it suggests a kind of use of that kind of power for some political reason. And of course that is very improper and inappropriate.

I don't want to oversimplify what may be a very complex set of problems: and what I did say yesterday was that I would, if confirmed, take it upon myself as a duty to attempt to work out guidelines which presumably could be made public, and should be taken up in any event with this committee. And I would do so in consultation with the Director of the Bureau and others to see what would be an acceptable, appropriate statement of the area of the Bureau's activities in this field, because I think we need reassurance. And I think we have to make quite clear that the Department of Justice is not involved in using any kind of power to influence, bring pressure in any political way, on any Member of Congress, or any citizen for that matter.

Senator ABOUREZK. Then you oppose the maintenance of such files? Is that how I am to take your answer?

Mr. LEVI. Well, I think you can, except I don't know what such files mean. Some files have to be maintained, and I tried to indicate that is what the guidelines would have to be about.

Senator ABOUREZK. Could I once again distinguish, and try to define, to which files you are referring? I am referring to files not containing letters written to the FBI, or responses to those letters. I am referring to files of information obtained by the FBI, whether the information was sent in by somebody else, or obtained from newspaper clippings, or from FBI interrogation of somebody else, or from an FBI investigation of that particular citizen. That is the kind of file to which I am referring.

My question is: Do you favor or oppose the FBI's maintenance of such files on private citizens?

Mr. LEVI. I think such files have to be maintained when they are directly relevant to the investigation of a crime.

Senator ABOUREZK. I'm sorry. May I further define that, Dr. Levi? If there is no allegation of a crime, and if there is no background check for a job in the Government, do you favor or oppose the maintenance of such files?

Mr. LEVI. Well I oppose the maintenance of files which have no relevance, and are not sufficiently closely connected with the probable

cause of a crime being committed, or in connection with the investigation of a crime. I think that the development of a guideline is going to run into the problem of how one defines that permitted area; and this is what I have said I would take upon myself, the obligation to try to better define.

Senator ABOUREZK. Well, if there is no question of someone either applying for a Government job or being offered a job, and if there is no allegation of a crime being committed, I don't know what you really mean by a close connection between probable cause of a crime. I think this is a pretty clear area that is being defined.

Mr. LEVI. Well then, fine. If there is no connection, then I don't see any reason for the file.

Senator ABOUREZK. Now with regard to your statement of trying to work out with the Director of the FBI guidelines as to how this should be done, if that is your position, is there really any question as to whether you ought to try or make an attempt to develop the guidelines? Couldn't you really state that you will write such guidelines, and then have them made part of a directive?

Mr. LEVI. I really did say that. I guess I have always left open the possibility that the guidelines might come into some area where there is a kind of an uncertainty, or a gray area; and it would be difficult to be too clear on the point. But I said I would do my best to write them, and to have them be meaningful, and that is a very serious commitment. And I must say, I don't think it is going to be an easy commitment to discharge. I think it is a very important one to discharge, and so I have said I would do it. I repeat, I would do it.

Senator ABOUREZK. I just have a couple of more questions with regard to your statement yesterday on the death penalty. I was able to question you once or twice on what crimes you would list that would cause you to support the death penalty, and I think you said hijacking and the commission of murder by somebody already in prison. You said there might be other crimes on the list that you could not enumerate at this time.

Mr. LEVI. I also said I thought the killing of a police officer.

Senator ABOUREZK. Yes, that's right. You still have no other crimes that you care to add to that list at this point?

Mr. LEVI. No, I don't. I think the point I'm trying to make is it would be a very limited list. Of course, I am aware that the State legislatures are passing laws with many more crimes where the death penalty would be regarded as appropriate. And I am aware, as we are all aware, that there is a problem because of the decisions of the Supreme Court and some uncertainty as to what might be constitutional.

I was just saying that my own view was that the death penalty can be regarded as appropriate and I think can be effective and a deterrent if it is kept for a limited number of crimes and is enforceable and is enforced. Obviously, that is a legislative decision which is going to have to be made, a combined legislative decision and a constitutional interpretation.

My own view is that I think the death penalty would be appropriate in a limited number of cases. I think if one gets a great number of cases it simply will not be enforced and it becomes not a good thing for our system of justice.

Senator ABOUREZK. Is that a change from your position on the death penalty? Weren't you at one time totally opposed to any application of it?

Mr. LEVI. Well, really not, and I understand, Senator, why you say that because in the Cardozo lecture the paragraphs which I have seen quoted in the newspapers seem to be complete condemnation of the death penalty, but it really has to be read in the context of my talking about the responsibilities for the administration of justice which are shared between courts, legislatures, and the executive. And what I was saying there is that the death penalty, as we had it in this country—at least that is what I meant to say—is unenforceable, that it hangs over the trial, has not been helpful and gives a sense of brutality, and I was opposed to it. I think this is quite different than a legislative determination which, as I said, is for a limited number of cases and can be enforced.

Senator ABOUREZK. Did you speak of those exceptions during that Cardozo lecture?

Mr. LEVI. No, I did not. No, I did not. In the subsequent lecture which I gave at Washington and Lee I criticized the Supreme Court for its decision in the *Furman* case because it seemed to me that this was not really a matter for the courts, that this was a matter for the legislature. And that is why I think the two positions are consistent. But I did not spell out—you are quite right—I did not spell out in either lecture what I thought would be the items included in legislation. I do think that is a matter for the legislature.

Senator ABOUREZK. Well, in a number of these areas, of course, you have said that you think the Congress has the sole responsibility to act, as well as some of the areas we talked about yesterday. I'm sure you realize that the position taken by the Attorney General in any of these areas influences to a great extent how Congress reacts and how much support or opposition there is to a measure.

So it's not totally within the province of Congress. Your position as well is very important.

Mr. LEVI. I understand that but I hope it is realized that the lectures to which you were referring were not given by an Attorney General.

Senator ABOUREZK. That's what Gerald Ford says about his statements when he was a Congressman.

Mr. LEVI. No, I think the point is that the Cardozo lectures were really a discussion of the problem of how law was being viewed today and it was not a message for specific legislative provisions which I think raises a different kind of problem and which I think could be done quite consistently with everything set down in that lecture, or so I would hope.

Senator ABOUREZK. You said at one point yesterday during our discussion that the community should decide on the extent to which the death penalty should be applied. Is that a fair representation of your position?

Mr. LEVI. I don't really think I said that but I do believe that it is very important on matters such as the death penalty and I mentioned abortion as another case that the legislative process which does reflect to some extent community reaction and to some extent creates community reactions, be a very important part of the deciding process.

I was taking a position with which I would hope you agree, that it is not helpful if one is going to have a strong democratic society to have difficult issues of this kind suddenly removed from legislative consideration, suddenly removed from the debate of the society and just decided by the U.S. Supreme Court. That is a very easy way to get things done.

But I think over a period of time it is self-defeating and it weakens the fiber of our own society. I think the theory of our society is that we do discuss these matters and that we do trust our legislative process to come to decisions about them. This is good for the society and it is not good for the society to have this kind of difficult problem taken away from it and decided by the Supreme Court.

Now I understand that lots of people do not agree with that view of how the Supreme Court ought to behave. But in any event, I was expressing my view and it is still my view.

Senator ABOUREZK. Aren't there, however, certain provisions in the Constitution, in the Bill of Rights specifically, that remain untouchable by the Congress and by any community legislature?

Mr. LEVI. Well, of course.

Senator ABOUREZK. These areas were removed by the authors of the Bill of Rights from the legislative arena. For example, freedom of the press and the right of free speech. And the Supreme Court has has interpreted the Bill of Rights that the death penalty is part of that constitutional protection.

Mr. LEVI. That's right, and I thought that was a mistake. I thought they were wrong.

Senator ABOUREZK. You think the death penalty ought to be put back in the legislative arena?

Mr. LEVI. I don't know if it can be put back exactly now that it has been modified by the—I don't know whether to say that the Supreme Court has taken it out or put it in such a position so that it is going to be very difficult to be legislative about it.

One of the problems with actions by the Supreme Court in fields of that kind is that the action is likely never to be as decisive as it appears. It is not a very good mechanism for legislation, really, and it is much more appropriate to have the action taken by the legislatures.

Senator ABOUREZK. You're talking about the death penalty?

Senator HRUSKA. Would the Senator yield for a clarifying question?

Senator ABOUREZK. Yes.

Senator HRUSKA. Did I understand the Senator from South Dakota to say that the Supreme Court has taken the death penalty out of the Constitution?

Senator ABOUREZK. No, I did not say that.

Senator HRUSKA. What was it that you said?

Senator ABOUREZK. I said they have taken it in part out of the legislative arena because of how they interpret the protection of the Constitution with regard to the death penalty.

Senator HRUSKA. What was it? I didn't understand your reference to the legislative duty.

Senator ABOUREZK. Simply that the Supreme Court ruled as unconstitutional the death penalty statute in the case it considered.

Senator HRUSKA. Well, the Supreme Court did not hold the death penalty unconstitutional, per se did it? It simply said that certain statutes which are drafted so that they may cause the arbitrary or indefinite imposition of the death sentence, that such type of legislation is unconstitutional. Isn't that what the court held?

Senator ABOUREZK. I think it did, yes.

Senator HRUSKA. Further, we should take note of the public support regarding the death penalty. Some 30 States, through their legislatures have reinstated the death penalty, which is some indication of public opinion. An additional indication of such support was the overwhelming vote by the Senate on this subject last year.

Senator ABOUREZK. Dr. Levi, is it your position that any imposition of the death penalty ought to be put into the legislative arena? What I'm really trying to arrive at is if your position is that the Supreme Court ought to consider it in terms of constitutional protections or should it be considered totally in the legislative arena.

I am trying to determine your position on it.

Mr. LEVI. Well my position is that it was an awkward thing for the U.S. Supreme Court, if one looks at the course of its decisions, to suddenly arrive at a point where it, whatever way one wants to restrict the statement, suddenly arrives at a position where the imposition of the death penalty, as we have had it, is considered a violation of the bill of rights under the 14th amendment.

This was not a decision, in my view, which was compelled by the prior interpretations of the Court. It is not an interpretation which can be based upon the historical reasons for the bill of rights.

So what it was in effect, in my view, was the Court stepping into a difficult situation where where I had thought that there should be clarification and changes made by the legislatures. And I think that would have been a better course to have been followed. And I guess what I said was that it weakens the democratic process if one resorts to the Court when one cannot get it to change or reform through the legislature.

That is really what is involved.

Now you have said quite correctly to me, "But aren't there other matters which the bill of rights does remove, such as in the first amendment, and so on?", and of course the answer is yes. And that is our system of government and I am for it. I do not think we should make it open-ended, though, and say that every time we get a difficult problem, "Well, the Supreme Court can handle that and not the legislative process." I think that is wrong.

Senator ABOUREZK. There was some discussion between you and several of my colleagues here yesterday in which you assumed that your appointment as Attorney General designate meant that you could exercise some independence in your position.

Is there any understanding between you and the President as to the degree of your independence so far as being nonpolitical and all the other matters that we discussed yesterday with regard to this issue?

Mr. LEVI. No. I don't think it has been spelled out to me what the area of independence is going to be. And I suppose that some people might say that shows a lack of prudence on my part. But I go back to the point that I think there is an implicit understanding of the kind of administration of justice which the President desires, and I cannot

imagine why anybody would ask me to take this kind of position if I were not going to have that necessary kind of independence.

Senator ABOUREZK. Dr. Levi, these are all the questions I have at this point. Thank you very much.

Senator TUNNEY [presiding]. Senator Hruska or Senator Mathias?

Senator HRUSKA. I understand, Mr. Chairman, that Senator Mathias has not yet had his initial round of questions. Am I correct?

Senator MATHIAS. The Senator is correct.

Senator TUNNEY. Senator Mathias.

Senator MATHIAS. I thank the Senator for calling that to the committee's attention.

Mr. Levi, I take this opportunity to welcome you and congratulate you and to pledge what assistance I can offer you over the term of your service as Attorney General. As a member of this committee I may be able to help you.

Mr. LEVI. Thank you.

Senator MATHIAS. I have reviewed some of the principal points that you made in testimony yesterday. I was pleased, for example, that you gave a commitment to the enforcement of the charter of the special prosecutor which is a subject of particular interest to this committee since that charter was hammered out very carefully, and I might also say very painfully, in this room, and so it is a subject to which we have a strong commitment here.

I understand that yesterday there was also considerable discussion on wiretapping and of the safeguards that might be employed to insure that this instrument would not be misused. While I do not want to rehash any of that discussion, I do have a very strong interest in this subject both from the point of view of civil liberties and from the point of view of law enforcement. I am one of the sponsors of the bill which would prohibit any warrantless wiretaps, and the more I think about it, the more strongly I am committeed to that concept. For that reason I would just like to ask you to make some clarifying comments on the statement you made yesterday.

Now as I understand it, it is your view that judicial safeguards alone would not be an adequate protection.

Is that right?

Mr. LEVI. That is correct.

Senator MATHIAS. And you felt there should be administrative safeguards in the form of clear regulations and a role for an accountable administrator, which you feel would be a better safeguard?

Mr. LEVI. Well, I do not know that it is a better safeguard. I think it is a necessary part of the safeguard.

Senator MATHIAS. Well, just so I have this clearly in mind, would the administrator you envision be out of the line of command in the Justice Department?

Mr. LEVI. Well, no; it's not. The area which you are speaking about would be the Attorney General or the designated Assistant Attorney General. I think the discussion to which you are alluding went beyond that, really, and went to my concern about electronic surveillance where there was some foreign involvement. And as to that, the discussion was whether I thought there should be the approval of a judge for that, and I guess what was going through my mind was that I assume that one can get the approval of a judge. I think the judge will give the ap-

proval. I suppose the justification for requiring the approval might be that it makes people think more carefully what they are asking for.

In that connection, though, I wanted to make the point that while I don't know whether the approval of the judge in that foreign involvement kind of case should be required, even if it were required, I would want some responsible official before that to have made a determination. And the reason for that is because I think in fact the judge is going to give his approval: I would think that it is essential that his approval not be asked unless there has been a prior very careful scrutiny by some high official.

Senator MATHIAS. I don't think we can charge you with knowledge of all pending legislation before you take office—we may try to do that after you are ensconced—but the legislation that has been proposed, to provide for judicial action in every case, a record made of every tap—that is not to say a transcript of what was learned, but a record of the fact that a tap was in existence—and a report to the appropriate committees of Congress as to the action taken as a result in that matter, does, I think, establish a clear line of accountability.

Now, as opposed to that, it seems to me that even the most conscientious, thoughtful and prudent Attorney General is going to be under significant pressures if he alone makes decisions in this area. He cannot divorce himself from the fact that he is the chief prosecutor of the Nation, that his prosecutorial role is a major element of his public responsibility. And so, I am wondering if, in what you have said, there might not be a role for both functions?

Mr. LEVI. Well, yes, there might well be. Of course, what I had said was, I have not yet made up my mind about the wisdom of requiring a judge's approval in all cases, and if I can be excused for not being familiar with all the legislative proposals, maybe I can also be excused for not making up my mind prematurely. I think it is something that is terribly important, and involves very important considerations, and I do not know what my final answer would be. I would like to add that, whatever the answer is, I would hope that we would find some way to make known the course which is being followed, so that there is not so much uncertainty in the country as to what is going on.

Senator MATHIAS. What you are really suggesting is that a judge would tend to be rubberstamp on these matters?

Mr. LEVI. Yes.

Senator MATHIAS. Granting for the sake of the argument that you are right on that, it seems to me that a double safeguard would not be incompatible, and might be useful.

Mr. LEVI. Yes. I understand that argument. But I think there are other arguments that have been advanced against requiring a judge, in each case, or—as a matter of fact, sometimes it might be necessary to get the approval of a judge after the fact; that is even under present legislation.

Senator MATHIAS. We have had some experience with getting the approval of the Attorney General after the fact, and that has not been too satisfactory.

Mr. LEVI. I shouldn't think so. So that I do think, when it comes to the approval of a judge on certain kinds of things, out of deference to those who have done a lot of thinking about this I am sure, within the Department of Justice and elsewhere, with whom I have not spoken,

I just do not feel sure that I want to make a commitment as to my view about the necessity of a judge's approval.

Senator MATHIAS. I would hope that you would continue your thinking in this field, and be prepared to give the committee the benefit of your advice and counsel at an early date. This will be a pressing subject of legislation on which the Department will be asked to comment, and I do not think that we can ignore the advice or the experience of other countries who have dealt with this problem, and who have some very illuminating experiences in other jurisdictions.

Mr. LEVI. I appreciate that.

Senator MATHIAS. Could you outline, very briefly, what you feel the objections to the judicial role are?

Mr. LEVI. Well, I suppose one of the problems which has been stated is that confidentiality will be breached if that occurs; that it will necessarily involve more people knowing about what is being done in a specific case. I hope I have not given the impression that, in fact, I am opposed to the requirement of the judicial approval. I just have said I'm not certain about it, and really, the question that you have asked me now is one reason why I'm not certain; because I do not think it is prudent for me to assume that I know, without consultation, all of the arguments which might be made against it. I am sure there are quite a few which I have not thought of, and I do not know how I would react to them.

Senator MATHIAS. There might be some for it.

Mr. LEVI. Well, I start with kind of a presumption for it, really, and I just don't think that I ought to engage in that kind of a thing without exploration.

Senator MATHIAS. Well, if we were to make the judgment that this sole power should be lodged administratively, would you feel it would be appropriate to establish a statutory base for that function?

Mr. LEVI. Well, I think we have to get some kind of a base for it, and I think that is what I meant before when I said that whatever direction we go, I hope that we can, without harm, state publicly what that direction is:

Senator MATHIAS. Turning to another area of current concern, yesterday the Senate established a Special Committee on Intelligence Requirements for the Government. I know that you have already stated your willingness to assist and cooperate with that committee. And as a member of that committee, I would just like to underscore the necessity for this assistance and cooperation. We have had unhappy experiences with files that cannot be located, information which can't be produced, questions of security advanced as the reason for not sharing with Congress information which is in the possession of the Government. If that pattern were to continue—and I have confidence that it won't—but if it were to continue, it could abort the whole value of the first look in 25 years at our intelligence community. I would hope that that committee would be taking a positive and a constructive view of the intelligence needs of the country, and the way in which to fulfill those needs. I believe this is something of very prime importance to the Republic, but there has to be a real commitment on the part of the administration in making it work.

Mr. LEVI. Well, if I am in a position to cooperate, I certainly would do my best to do so. The difficulties which you mention may be very

real, since I do understand that various Attorneys General have made inquiries and sometimes found answers which made it difficult for them to know quite what the situation might have been in the past. So, if I am at all—or if I seem at all reluctant or cautious, it is because I really do believe that the cooperation is enormously important; and I do not want to be in the position of pretending to cooperate, when in fact I am not. And that, I assure you, will not be the situation.

Senator MATHIAS. I would hope that you would share with those of us in the Senate who urged the initiation of this study the conviction of the real importance of this study to the continuity of constitutional government in the United States.

Mr. LEVI. Well, I certainly agree.

Senator MATHIAS. Looking a little bit to the future, one of the notes of concern that has been expressed in the Justice Department in cent months, in speeches by the Attorney General, and in speeches by other spokesmen for the Department of Justice, has been emphasizing the relationship between crime and the economy. As the economy has turned down, crime has turned up. We have had more juvenile crime. We have had elderly Americans stealing food. We have had the whole range of problems which seem to relate to unemployment and crime; and while crime can never be condoned under any circumstances, we cannot be blind to the causes of crime. I am wondering if you have any general comments to make as to the kind of wisdom that has to be applied if these unhappy conditions continue?

Mr. LEVI. Well, I think that is not an easy question, really. Let me say that I think it is important, first, not to mix up two things—and you very carefully have avoided doing it. There are various things that can be done to help people who are unemployed. There are various things that ought to be done to remove some of the causes or reasons for crime; and these things should be done. I think it is a great mistake to say, because some of these conditions exist, that crime will be condoned, as you well know; so that I don't think there should be any inconsistency between the position that, to the extent that causes and reasons for crime can be removed, those things should be dealt with. At the same time, crime itself, when it occurs, must be dealt with.

Now, in dealing in criminal law enforcement, I must say, I think that has to be a combination of determination and, I must say, to some extent a certain kindness. I don't think the enforcement of criminal laws should be done in a kind of, if one can avoid it, bitter, hostile way. This creates all kinds of repercussions in the society. But I do think they should be enforced, and I do think the enforcement needs improvement; and I must say that for the situation of the unemployed and the poor, it is extremely important also that they have the protection of an effective criminal law enforcement, and not be abandoned to a situation in which their safety is in jeopardy. So while, I realize that we, as has frequently been the case, may be going through a difficult period, my view is we will have to be more effective on enforcement, the attitude has to be one which is professional; and that this is not, however, at all inconsistent with attempts to alleviate the situation of people who find themselves in a difficult situation, because of the present economic situation.

Senator MATHIAS. Raising this with you, I suppose, is speaking not so much of your role as an administrative officer or as a chief prose-

cutor, but of your role as a member of the President's Cabinet, with a voice in the establishment of policy.

Turning to criminal justice data banks, we have had a very checkered history in that field. The Senate at one time, by rolecall vote, determined that it would not provide more money for the expansion of criminal justice data banks until the Department of Justice had established some philosophy, some guideline, as to what information was to be stored in the bank; who was to hold the key to the bank; and under what condition that key would be delivered up; and to whom. We, having marched up that hill, turned around and marched down again, and provided the Department with money to expand the bank in the absence of that philosophical decision.

Last year there were bills proposed, both by the administration and by Members of the Senate, on the subject. The differences were so wide that we never bridged them, and we never got legislation. In the meantime, the system is growing. It is taking deeper roots, both at the national and on the local level. It is going to be much more difficult to make the kind of changes which may be required to establish the sort of philosophy which our constitutional system requires. I would hope that we would have both personal and early attention on this; in particular to maintain the status quo.

For instance, there is a proposal pending at the moment to place the national law enforcement telecommunications system, which is one aspect of the whole problem, within the Department, at the very time when we are considering the broader and more comprehensive question. I hope that you will be very cautious about altering the status quo until the basic decisions are made. It will require a greater wrenching and a greater dislocation in the future if we go forward blindly than, if we pause now and make the right decision.

Mr. LEVI. It seems to me that I have a full list of matters which have to be given top priority for early consideration. I am glad to add this.

Senator MATHIAS. Well, that is the basket you are buying.

Mr. Chairman, at this point, I would like to offer for the record articles that appear in Trial, the national legal magazine, one by Mark Gitenstein, and one by Clarence M. Kelley, which deal with this subject and which may be of some value.

Senator TUNNEY. Without objection, so ordered.

[The material referred to was filed with the committee.]

Senator MATHIAS. In the last Congress, the Subcommittee on the Separation of Powers held hearings on the Department of Justice in connection with several legislative proposals: One an independent Department standing aside from a national administration; second, on a permanent Special Prosecutor who would be independent of the Department; and third, on nonpolitical U.S. attorneys. I think you have touched on the first two of these, but I am not sure you have expressed a view on whether or not the U.S. attorneys should no longer be appointed as political patronage.

Mr. LEVI. I take it that the latter category is your way of indicating the activity and actual authority of the Senators?

Senator MATHIAS. The President makes the appointments, but he may give greater or lesser deference to the individual judgments of

Senators from the States that are involved. The fact is, however, the U.S. attorneys are today political appointees. If they are made in those cases where the Senators and the President happen to be of the same party, it is one function; if they are not, it's another function; and if it is a mixed situation, there is still a third. But any way you cut it, the U.S. attorneys are political appointees, and are therefore in a different status from those who prosecute directly within your Department as career lawyers, who have devoted their time in an impartial way to work with the Department of Justice.

Mr. LEVI. Well, I am not going to take the position that the U.S. attorneys should be removed from that kind of political process. I don't know whether it would be realistic if I took it anyway, but I'm not going to take that position.

Senator MATHIAS. Let me say that you have referred to the Senate's role in it. As one who has had to exercise that responsibility from time to time, it is a mixed bag from our point of view.

Mr. LEVI. I am sure it is. I think we have a good political system, and one ought to make it work, and it is quite possible—and one can just look around and see that it is quite possible—to have very good U.S. attorneys appointed under this present process.

Senator MATHIAS. It is not only possible, it has been done. I would suggest that the appointments from Maryland are outstanding examples of that.

Mr. LEVI. And so, I don't see anything wrong with that. In fact, I think that there are some benefits which come from it. One could have a theoretical discussion, if one wished to, which would be of a different kind; namely, that the temptations for a U.S. attorney are such that he should be disqualified for a period of years after he ceases being U.S. attorney from certain political offices. But I do not advocate that. But if one were really being concerned about that kind of political involvement, I suppose one could move in that direction. I certainly do not suggest that.

Senator MATHIAS. Let me say that I join you in being without strong personal views on the subject at this time. It is, however, one of the proposals which has been before the Senate, and before this committee, and one with which we may have to wrestle together. Consequently, I think it is appropriate to raise it.

Now, one final area. Last night the Washington Star described you as, and I'm quoting the Star, "a member of the Chicago school." Certainly in this committee, we don't make conclusions by way of association. But I wonder if you would like to comment on that, in view of the fact that Milton Friedman, Robert Bork, and others might be comprehended as under the umbrella of the Chicago school.

Mr. LEVI. Well, the Chicago School has had a belief in the importance of free enterprise. It has generally tended to be, but not in all cases, against Government regulation. It is an old tradition, which goes back much before Milton Friedman or George Stigler or Henry Simon, with whom I work. It goes back to Frank Knight, and before that. The Chicago school has shown a certain independence in its view of economic theory, refusing, I think, to buy each economic fad as it has come along; and sometimes tending to be in favor of the particular positions of its own—where, however, I must say there's been consider-

able disagreement among the economists in Chicago. So, if the question is, am I a member of that school, well, I would hope I am, because I was trained in it, I have collaborated in articles with members of it. It does reflect my general approach. But I think that there are many rooms in the mansion of the Chicago school.

Senator MATHIAS. As I understand it, much of the economic philosophy of the Chicago school rests upon consumer satisfaction and resource allocation as guides for both economic policy and antitrust policy. Would that be a fair statement?

Mr. LEVI. I think so. If I understand it, I think so. I think I should say that one of the things the Chicago school has always assumed was that we have an economy of scarcity. During the whole period when there was all this discussion of abundance and affluence, that was not the approach of the Chicago school; because it always thought that there was a problem of preference and choice, and one could not solve every desire. One had to make choices.

Senator MATHIAS. W. J. Liebeler, Director of the Federal Trade Commission's Office of Policy Planning and Evaluation, has raised some questions which would flow from this train of thought. Do you know him by any chance?

Mr. LEVI. I'm not sure whether I do or not.

Senator MATHIAS. Mr. Liebeler has written an article which questions the assumptions of the Federal Trade Commission in their antitrust activities and the efficient use of Government resources in the antitrust area. I did not know whether you are familiar with this particular train of thought from this particular source.

Mr. LEVI. No; I'm not, and I must say I must guard against it. As I'm sure all of us are aware, the Antitrust Division I think in general has always thought that it did things better than the Federal Trade Commission.

Senator MATHIAS. Well, I think you are right to leave yourself some elbowroom here. It is one of the thorniest areas. But Mr. Chairman, since I have made reference to that article, I ask unanimous consent that it be included in the record at this point.

Senator TUNNEY. Without objection, so ordered.

[The material referred to was filed with the committee.]

Senator MATHIAS. Now, as a last footnote, Mr. Levi, I have been devoting a considerable amount of time in the last year to the Senate Special Committee on National Emergencies and Delegated Emergency Powers, which we hoped would complete its work last year. In fact, the Senate did pass a bill which would put to rest the state of national emergency which has existed from 1933 and would, of course, make substantial changes in the way the executive operated in a number of fields, economic, military, and others.

We have had an outstanding record of cooperation. Attorney General Kleindienst was extremely helpful and assigned a member of the Justice Department staff to work with our Committee. So were Attorney General Richardson, both as Secretary of Defense when he loaned us the Air Force computer to run down all of the statutory uses of the word "emergency" and later as Attorney General; and Attorney General Saxbe.

We have had an extraordinary record of executive-legislative cooperation. President Ford has personally taken an interest and in-

volved himself in the work of the committee. I would close simply by expressing the hope that you would have the same interest and the same degree of cooperation.

Mr. LEVI. I would.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator TUNNEY. Thank you, Senator Mathias.

Are you sure that you do not have other questions?

I hope that you are not deferring to me.

Senator MATHIAS. Well, Mr. Chairman, since you mentioned it——

[Laughter.]

Senator HRUSKA. Mr. Chairman, may I inquire as to the plans of the chairman on this session? I understand both parties have party organization caucuses at 12:30. What time can we look forward to reconvening this session?

Senator TUNNEY. Would 2 p.m. be all right with you, Senator?

Senator HRUSKA. That would be satisfactory on our side. I presume your side would not be much later than that.

Senator TUNNEY. I will try to be here at 2, and if I am not here, perhaps you could begin the questioning?

Senator HRUSKA. That will be fine. It is my hope that those who had been sitting here patiently will get their turn at an early time when we resume our session rather than yielding to someone who has not been present and might want to have a preferred position.

Senator TUNNEY. What I would suggest is that if you and I are present this afternoon, I question Mr. Levi for 15 or 20 minutes and then turn it over to you for 15 or 20 minutes and then back to me.

Senator HRUSKA. That will be very satisfactory. The Senator is always generous and courteous.

Senator TUNNEY. I would want to make sure that you do not sit here for 2 hours listening to my questions and then not have time to ask your own. So let us do it that way, Senator Hruska.

Mr. Levi, I do not want to suggest by that last offhanded statement, or have you believe, that I am going to be questioning you for 2 hours. I do, however, have a few questions that I would like to ask you.

I want to say that I appreciate the fact that you came to see me in my office and that we had an opportunity to go over a number of areas of the law and your responsibilities as Attorney General. I was extremely impressed by your candor, your thoughtfulness, and your very great knowledge of the law. I think that it is extremely important to have a person as Attorney General who has the kind of intellectual achievement, objectivity, and independence that you demonstrated.

I would like to get your thoughts in several areas in which I know you have been questioned by others and I will try not to repeat those questions. I have had an opportunity to look over the record from yesterday and I think that I can approach the subject matter in a way that will not be repetitive.

I am planning to introduce a bill within the next few days which is going substantially to increase the amount of funds to be made available to the Antitrust Division of the Justice Department. At the present time the budget is about $17 million. It seems to me that in this coming year we ought to have perhaps $35 million and then perhaps $50 million the following year. I think the Justice Department would be able to do a better job in monitoring the anti-competitive aspects of

today's economy and would have the manpower and the intellectual resources to bring cases where it was felt that a complaint was justified.

I am mindful of the fact that many commentators have suggested that one of the major causes of inflation today is price rigging in many sectors of the economy and it is clear to me that with a $17 million budget in the Antitrust Division of the Justice Department, and with a $1.300 billion a year gross national product, there is no way that the Justice Department can effectively monitor what is going on in the Nation's economy and be in a position to bring lawsuits where it is felt that the law is being violated.

Just by way of example, it is clear that the resources of the Justice Department are strained to the limit as in the IBM case when the Justice Department takes on a major company with the resources that that company has. With the fact that they can write off against their taxes the lawyers that are working on the case, the Justice Department is outgunned in every respect.

I would like to get your reaction to the proposal that I am planning to make to the Senate and the Congress to see this kind of an increase in the budget of the Justice Department.

Mr. LEVI. Well, I have several reactions, and I imagine they would be as you might expect them to be. First, I have already said I am in favor of strong antitrust enforcement but particularly in the area of collusive arrangements which educe productivity during a period when an increase in productivity is so important.

The second is I do not know where those additional funds are going to come from. So that if I am being asked, do they go better for this purpose within the Department of Justice than for some other purpose, I think I have to be in a position to see the whole thing, and I am not in this position now.

So I am generally supportive of this indication of added help. I do not want to be misunderstood. I do think it is frequently an advantage to Government attorneys that there are not so many of them. When I conducted the hearings for the Cellar Committee on the steel industry I had the impression, I may have been wrong, that there were perhaps three of us and there were 100 lawyers in the room. I thought it was a great advantage that there were only three people that had to deal with each other and a great disadvantage that the 100 had to deal with each other.

So I do not always think it is a question of numbers. I think that the strength of the Antitrust Division will come from the great ability in the people it has and high morale. Obviously, large cases take more numbers, and I must be in favor of the amount required.

Senator TUNNEY. I would agree that there is a point of diminishing returns in the number of lawyers that you can have on a case but it also seems to me that when you factor in the benefits to be derived by having strong antitrust enforcement against the cost to the economy of price rigging in other anticompetitive practices, that probably the very best expenditure of money that you could have would be in the Antitrust Division of the Justice Department so that there be a better means of evaluating anti-competitive practices throughout the economy. I do not think from what I have heard from people inside the Department as well as outside the Department that the Antitrust Division has the horsepower, the manpower, to be able to do an ade-

quate job in investigating the various allegations of anticompetitive practices. I appreciate the fact that you are going to, to a considerable extent, have to be promotive of the Administration's decisions on budgetary matters. But it would be my hope that the Office of Management and Budget would not be the determinant of your attitude on this particular subject.

Mr. LEVI. They might not determine my attitude but they might determine what is done. I think that would be the problem, wouldn't it?

Senator TUNNEY. The Justice Department has, it is my understanding, 40 out of 340 lawyers on the IBM case, and it cost $20,000 a month to support and house them in New York while they were fighting the case. It seems to me that with the tremendous concentration of manpower and resources in that one case it is just not possible to do as good a job as should be done in other areas.

I was curious to know what you think about moving the Criminal Code Revision Act this year or next year. Do you feel it is important that we have a codification of the Criminal Code?

Mr. LEVI. Yes; I do and I believe, that what I have indicated is that I realize that there are some provisions of that code to which there are perhaps strong differences of view and which perhaps ought to be looked at. And I would welcome the opportunity not only to look at them myself but to see that such discussions might take place which would help solve such disagreements if they can be solved, or at least be sure that the matter has been fully explored as to those provisions. But I would think it unfortunate if all of the work that had been gone into would have to be started all over again.

Senator TUNNEY. Of course, one of the problems that we have had, I think, is that there have been so many Attorneys General in the last few years who have had an opportunity to come up and testify on the Criminal Code that it has been difficult to get a consistency of attitude or policy from the Department which would enable the Congress to move effectively and quickly in this area.

I think that there are provisions of the Criminal Code which I disagree with, and we have one of the authors of the legislation here with us, Senator Hruska, and I know there will be opportunities in the committee to battle out our various differences on the individual provisions. But it does seem to me that it is important that we move to codify the Federal Criminal Code, and you consider this to be an important priority insofar as your administration of the Justice Department is concerned?

Mr. LEVI. Yes; and in view of what you have told me of the track record of Attorneys General, I think we had better move quickly.

[Laughter.]

Senator TUNNEY. I am going to be writing you a letter with respect to certain provisions of the Criminal Code just alerting you to my concern that some of the provisions, as drafted, are not adequate to serve the needs of Twentieth Century society. I am thinking particularly, for example, about the insanity defense in which, it seems to me, the code as drafted represents a retrogression into a former era and is completely inconsistent with the standard formulated by the American Law Institute which has been adopted by a number of Federal courts.

I will ask you to look into such matters prior to the time that you come to testify on the Criminal Code. I believe that my view represents not only my viewpoint but the viewpoint of a substantial number of people who are deeply concerned about the code as drafted.

It is my understanding that you have not had experience as a prosecutor. Or have you?

Mr. LEVI. Not unless one calls what I did in the Antitrust Division as that kind of experience.

Senator TUNNEY. Do you feel that you have a pretty good idea of the kind of person that you are going to look for to head the Criminal Division?

Mr. LEVI. Well, obviously I think it has to be somebody who is familiar with the practice in that area. It is going to have to be someone who can be highly competent and very respected. I do not think it is going to be an easy position to fill, and I suppose the immediate question is whether one looks outside the Department rather than inside for that person.

And I have to confess that while I have thought about it I have not—assuming that the matter is entirely up to me, which of course it is not—but in terms of my own view of the matter, I have not come to a decision.

Senator TUNNEY. Would you ever condone or allow an organized program within the Criminal Division to seek out prosecutions of political dissidents, whether left or right, using agents provocateur, widespread wiretapping, special grand juries, special prosecution teams, and perhaps wrapping it all up in flimsy conspiracy charges?

Mr. LEVI. Well, it is such a broad question, and the problem is——

Senator TUNNEY. My desire is to elicit a state of mind, not a precise answer.

Mr. LEVI. Well, the state of mind is, obviously, I am against it, but also I cannot say that I am going to take the position that the commission of crimes of subversion are to be protected from being prosecuted or surveillance. Obviously, I'm not going to take that position.

I have also written, by the way, and I gather I've been criticized for it, that I think conspiracy cases are, in my own view, not usually a very good way of approaching these areas.

Senator TUNNEY. In other words, you feel that it is better to bring a charge on the substance of the law?

Mr. LEVI. For what the individual did.

Senator TUNNEY. On a law being broken rather than on a conspiracy charge?

Mr. LEVI. Yes.

Senator TUNNEY. Do you have an agenda regarding the areas of law enforcement which you think ought to be emphasized?

Mr. LEVI. I think I was asked yesterday as to what my priorities would be, and I said I thought that crimes which are so serious now in the urban areas, crimes of violence, really have to be given a top priority.

Senator TUNNEY. What about making more manpower available for investigations into white collar or business crime?

Mr. LEVI. You mean other than antitrust?

Senator TUNNEY. Other than antitrust?

Mr. LEVI. Well, I don't really know what the distribution of manpower is on that, and obviously I do not want to be in the position of appearing to say, when I say that urban crimes have to be given a top priority, that I am in favor of a tough enforcement against the poor and not saying anything about the white collar crimes which are presumably committed by those with greater wealth. I would not want to say that at all.

I do have a slight feeling of sadness that apparently one always has to balance one as against the other because, as I tried to say before, I think that the proper enforcement of criminal justice in the urban areas will work to the great advantage of the poor and is not hostile.

Senator TUNNEY. Do you feel that there is a need to reform the grand jury system as it now operates?

Mr. LEVI. I think that is a terribly difficult question. I do not think the grand jury system achieves what it is supposed to achieve frequently, and I do not really think it is much protection, in fact, for the accused, the potentially accused, but I am not prepared to say that we should do away with it nor am I prepared to say that we should reconstitute it so that it takes a different due process form. That may be something which I ought to do more thinking about, but I think to make the grand jury an adversary due process arrangement would not be desirable.

But I think we have to understand it is not the protection for the accused it is sometimes assumed to be.

Senator TUNNEY. Should grand juries themselves have greater leeway and operate less as a rubber stamp for prosecutors?

Mr. LEVI. Well, I'm not certain about that. Grand juries which go off on their own and indict when they should not indict have to be met by, I think, a refusal to prosecute where the indictment really states no crime at all and there has to be a motion to abandon the prosecution.

I have had some experience with grand juries myself. I have conducted them. I know that the prosecutor does have usually a great influence. I have heard of some grand juries which were said to be runaway grand juries. I have always been doubtful whether they really were runaway grand juries.

So I am not sure, I guess, of the orbit of the question because I think that citizens' rights can be greatly injured by grand juries which do just as they please. And so I'm really not in favor of that.

Senator TUNNEY. Without going into other specific of the grand jury system, inasmuch as you have indicated that this is something which is going to require greater thought on your part, do you plan to have a study made of the grand jury system so that you will give greater thought to it, or do you think that it is one of those areas where you will probably just let things rest where they are?

Mr. LEVI. Well, I hadn't thought it had as high a priority as other things which have been mentioned. I do think it is a very interesting question which has some importance. I don't know. I will have to think more about it. I don't know whether it's a kind of thing that a study is going to make any difference.

Senator TUNNEY. Under what circumstances, if any, would you want to see newsmen brought before a grand jury and forced to reveal their confidential sources?

Mr. LEVI. Well, I guess what I'm being asked is whether there is an absolute privilege, and I do not think there is an absolute privilege.

Obviously, I think it is the law and I think it is right, that this compulsion or sources should not be something done easily or thoughtlessly, but I don't think I am prepared to say—although I'm sure some would like me to say—there should be an absolute privilege.

Senator TUNNEY. Can you tell me how you would feel about a bill which would grant an absolute privilege? Assuming that under the Constitution it is your interpretation that the absolute privilege does not lie, would you like to see legislation which would create absolute privilege?

Mr. LEVI. Well, I think it would be a mistake probably, and I think it would involve discussions really as to the scope of the privilege. I doubt whether we would want to say that certain kinds of information under any form of a privilege could just be withheld.

Senator TUNNEY. Senator Hruska, I understand that you have to leave. We will recess now and reconvene at 2 p.m. I will be glad to have you begin the questioning when we reconvene.

Senator HRUSKA. Very well. If you wish to continue for a little while longer, I have no objections, but I will have to excuse myself.

Senator TUNNEY. We will reconvene at 2 p.m.

[Whereupon, at 12:32 p.m., the committee recessed, to reconvene at 2 p.m. of the same day.]

AFTERNOON SESSION

Senator HRUSKA [presiding]. The committee will come to order. We will resume the hearings with testimony of Dr. Levi, nominee for the Office of Attorney General.

TESTIMONY OF EDWARD H. LEVI—Resumed

Senator HRUSKA. Dr. Levi, we have had some discussion from time to time since yesterday morning about wiretapping and electronic surveillance. I followed all of it with interest, and I thought you had a good understanding of the subject. Some individuals have the idea that the issue of domestic surveillance for law enforcement purposes is well outlined in the law, but in fact there still remains to be dealt with legislatively, or perhaps by the Supreme Court, the question of surveillance in national security cases and also for foreign intelligence.

Moreover, repeatedly there has been an apparent lack of understanding on the part of some people as to the safeguards now contained in the law as to the use, the gathering and the use of electronic surveillance and wiretapping. Now, you have spoken in your answers of it as an unusual procedure which must be applied with proper administrative care and safeguards.

Some of the questions you have been asked imply that it would be better to have the supervision and the employment of wiretapping and electronic surveillance by more than just one person, to wit, the Attorney General.

As a matter of fact, let me recite to you what I understand to be the procedures employed in this practice. I get this information from those who have used it, the Attorney General, the head of the Criminal

Division, and the Director of the FBI; and let it not be said that the Subcommittee on FBI Oversight has not familiarized itself with this and other actions, because it has.

As I understand it, when a field man, either in the U.S. attorney's office or the FBI, perceive a need for wiretapping, he compiles a justification which is sent to Washington where it is reviewed by the Assistant Attorney General in charge of the Criminal Division. The Assistant Attorney General has an advisory committee. Its recommendation goes to the Attorney General for his consideration.

Thereupon, upon approval of the Attorney General the request is submitted to the Court.

Is that your understanding of the procedure?

Mr. LEVI. That is my understanding, yes, sir.

Senator HRUSKA. It does involve the decision of more than one man, does it not?

Mr. LEVI. It involves several.

Senator HRUSKA. Now, as to the further safeguards of this procedure, is it not the provision of the law and the practice that wiretap recordings are returnable within a specified period of time?

Is that part of the procedure?

Mr. LEVI. That is correct.

Senator HRUSKA. When the tapes are completed, they are made available to the Court for its disposition, either sealing and storing, or providing them to law enforcement officials for use in the courtroom as the occasion required.

Am I correct in that?

Mr. LEVI. That is correct.

Senator HRUSKA. So there is close monitoring over the products of wiretap.

Now, does it occur to you that amendment to the present law is required so as to tighten up these proceedings or make them more foolproof?

Mr. LEVI. No. I hadn't thought so. I think the statement that I tried to make continually on this is I thought the procedure should be followed, the procedures as they are set forth.

Senator HRUSKA. You have made that statement, and I seek to impose on your time only for the purpose of having this spelled out in greater particularity.

Now reference was made during previous questions to the fact that LEAA is providing funds for wiretap devices to local State enforcement agencies. Do you believe that this is bad policy?

Mr. LEVI. I tried to answer that this morning by saying that it didn't seem to me that it was bad unless it was somehow inconsistent with following the appropriate procedures, and I did not see why one could not both follow the very careful procedures and at the same time supply these devices.

Senator HRUSKA. As a matter of fact, most of the money supplied to the States and cities comes to the local authorities through block grants of LEAA funds. If the local authorities choose to spend a part of those funds for wiretapping devices, and if such devices are legal in the State where they are used, that is a proper part of police equipment, is it not?

Mr. Levi. That is right. And of course, the statute is applicable to the requirements for the State use.

Senator Hruska. There is an overriding control, isn't there?

In the matter of political dissent, as I understood it your testimony was that political dissent in and of itself is not objectionable. As a matter of fact, I concur that it is a highly commendable activity. However, when such dissent is combined with certain other activities which go beyond mere political activity and are of an illegal nature or a threat to national security, is it not at that point that wiretapping, electronic surveillance, sometimes becomes advisable and necessary?

Mr. Levi. I think if it is illegal or closely connected so that there is a probable reason to believe that crime is to be committed, then it is no longer just political dissent.

Senator Hruska. Turning to the question of unsolicited information about Members of Congress as a part of FBI files, not too long ago, as a matter of fact a week ago today, the Director of the FBI, Clarence M. Kelley, issued a statement on that subject. I presume you are familiar wit it. I ask that the text of the statement by Mr. Kelley be printed in the record at this point.

[The statement referred to follows:]

U.S. Department of Justice,
Federal Bureau of Investigation,
Washington, D.C., January 21, 1975.

FBI Director Clarence M. Kelley issued the following statement today:

"In connection with recent allegations that the FBI is currently improperly soliciting information concerning Members of Congress or misusing information in FBI files concerning Members of Congress, I wish to state unequivocally that such statements are erroneous and without any basis in fact.

"The policy of the FBI is that information concerning Members of Congress is collected when Members are the subjects or victims of an investigation or a specific background check is requested concerning the suitability for nomination to a position in the Executive and Judicial Branches. Solicitation of information concerning Members of Congress is done only as necessary to discharge our investigative responsibilities.

"Information concerning Members of Congress is maintained in various files at FBI Headquarters in Washington, D.C. Such files exist because they relate to an investigation or a background check, correspondence with the Member of Congress, or information not solicited by the FBI, but volunteered by the public. In this latter category, unsolicited information is received from time to time making allegations concerning Members of Congress as well as other individuals in public and private life. If such allegations appear to relate to matters within the investigative jurisdiction of the FBI, they are appropriately investigated. If such matters do not reasonably appear to relate to the investigative jurisdiction of the FBI, a reply letter is addressed to the correspondent advising him that his communication was received, but that the matters related do not appear to come within FBI investigative jurisdiction. Such correspondence and the official reply made by the FBI are retained as a record of official action taken by the FBI. Correspondence of this type is filed for record purposes.

"As indicated, Congressmen are treated substantially the same as any other citizen concerning whom the FBI may receive information. However, when information is received concerning employees of the Federal Government or those serving as Government officers in any of the three Branches of Government, as a matter of practice it would be submitted by FBI field divisions to the FBI Headquarters in Washington so that it would be available in the event a check of our records is necessary.

"Such routine name checks are conducted frequently concerning persons who are being considered for appointment to positions in the Judicial and Executive Branches. It is not possible to predict, when information is received, whether the individual whom it concerns will or will not at some time in the future be

given consideration for such appointments. Therefore, all such information voluntarily submitted is retained for record purposes.

"In summary, it is the policy of the FBI to solicit information concerning Members of Congress only when there is investigative jurisdiction to justify the collection of such information. However, unsolicited information received from time to time is appropriately retained for record purposes. Further, it is the policy of the FBI that the use of such information would be limited to assistance in investigations and background checks and is never used to influence the judgment or actions of any Member of Congress.

"Early hearings are being scheduled before the House Judiciary Committee and I welcome the opportunity to appear and dispute the fallacious statements about the FBI's misuse of information concerning Members of Congress. I will be prepared to discuss in detail FBI practices and procedures in this regard."

Senator HRUSKA. I refer to page 2 of that statement in which we find these words:

unsolicited information is received from time to time making allegations concerning Members of Congress as well as other individuals in public and private life. If such allegations appear to relate to matters within the investigative jurisdiction of the FBI, they are appropriately investigated. If such matters do not reasonably appear to relate to the investigative jurisdiction of the FBI, a reply letter is addressed to the correspondent advising him that his communication was received, but that the matters related do not appear to come within FBI investigative jurisdiction. Such correspondence and the official reply made by the FBI are retained as a record of official action taken by the FBI. Correspondence of this type is filed for record purposes.

Do you see anything wrong with that type of procedure as described thus far?

Mr. LEVI. Well, I don't, but I think one of the problems that has been raised is whether that in some sense then becomes a file which is significant for whatever reason later on for what is described as a political purpose. It is not clear to me how one separates out such material or whether one should, and this is something on which I do not have a conclusion.

Senator HRUSKA. Mr. Kelley goes on to say, and I think in part what he says will answer the query in your mind: "As indicated, Congressmen are treated substantially the same as any other citizen concerning whom the FBI may receive information."

Is it to be assumed that the Congressmen are as good as other citizens? Do not most of us assume that?

Mr. LEVI. I should hope so.

Senator HRUSKA. Most of us do.

Now, then, "when information is received concerning employees of the Federal Government or those serving as Government officers in any of the three branches of Government, as a matter of practice, it would be submitted", this unsolicited information, "by FBI field divisions to the FBI Headquarters in Washington so that it would be available in the event a check of our records is necessary. Such routine name checks are conducted frequently concerning persons who are being considered for appointment to positions in the judicial and executive branches."

And I have understood from time to time people who have held membership in the Congress sometimes lose that membership and apply for employment with the Federal Government. That is when such a file becomes handy for references, does it not?

Mr. LEVI. I would assume so.

Senator HRUSKA. In conclusion, here is what Clarence Kelley said, "In summary, it is the policy of the FBI to solicit information con-

cerning Members of Congress only when there is investigative jurisdiction to justify the collection of such information. However, unsolicited information received from time to time is appropriately retained for record purposes. Further, it is the policy of the FBI that the use of such information would be limited to assistance in investigations and background checks and is never used to influence the judgment or actions of any Member of Congress."

It seems to me that is a clear statement of what the FBI policy is. This policy is nothing new.

It is the potential abuse of such information that may concern us. But we should remember that even the office of a Member of Congress could be abused. I imagine the Office of Attorney General could be abused, as could the Office of the President or a judge.

But in the system itself there are safeguards to which you have referred in your own testimony.

The next topic to which I address your attention is the death penalty. There are now a total of 30 States that have restored the death penalty as a sanction against people who deprive other people of their lives. Only last week the Commonwealth of Virginia added to that number making a total of 30 States that have enacted such legislation since the 1972 Supreme Court decision.

And without objection, there will be placed in the record at this point a list of those states.

[The information referred to follows:]

STATES WHICH HAVE ENACTED A DEATH PENALTY LAW AS A RESULT OF THE 1972 SUPREME COURT DECISION—AS OF AUGUST, 1974

1. Arizona
2. Arkansas
3. California
4. Connecticut
5. Florida
6. Georgia
7. Idaho
8. Illinois
9. Indiana
10. Kentucky
11. Louisiana
12. Mississippi
13. Montana
14. Nebraska
15. Nevada
16. New Hampshire
17. New Mexico
18. New York
19. Ohio
20. Oklahoma
21. Pennsylvania
22. Rhode Island
23. South Carolina
24. Tennessee
25. Texas
26. Utah
27. Wyoming
28. Virginia

North Carolina and Delaware—Judicial decisions in those states have held that previous law meets the Supreme Court test.

Senator HRUSKA. In addition to the action of these States, the Senate has carefully drawn a bill that those of us who sponsored it believe to comply fully with the Supreme Court decision that bill passed by a substantial vote in the Senate last year. I hope it will be pased again and approved by the other body. There are those who feel that that penalty, as brutal and as barbarous as it might seem, should be imposed upon people who believe in the death penalty. They have inflicted death upon others.

Many observers think that it would be of deterrent value to see that this penalty exists for the man who commits murder.

The other day there was an item in the press that a policeman in New York City was killed in the line of duty trying to frustrate a

holdup. The total number of police officers killed in 1974 was 132. Now, the killer of a policeman is among those that you would include in a death penalty bill, as I remember your testimony. Is that correct?

Mr. LEVI. That is correct.

Senator HRUSKA. And in your judgment, is that based upon good reason?

Mr. LEVI. Well, I would not have suggested it if I had not thought so, yes. I think it is, it has good reason.

Senator HRUSKA. Is not the same true of prison officials and guards?

Mr. LEVI. Yes.

Senator HRUSKA. How could a prison run if there is no penalty for a man serving life? He could at will take the life of any other prisoner or guard and no further penalty could be levied on the wrongdoer.

It was suggested in earlier questioning that the Attorney General has some responsibility in determining whether such a law is to be enacted, because the Attorney General may testify either for or against such a bill. That might be true, but have you ever known of any Attorney General who cast a vote in the Senate or in the House while he was Attorney General?

Mr. LEVI. No; I hope I don't.

Senator HRUSKA. So that when we say it is a responsibility of the Congress, it is a responsibility of the Congress and not of some official or witness who might testify on the bill; is that correct?

Mr. LEVI. Certainly.

Senator HRUSKA. In our FBI oversight hearings—I do not know whether they have come to your attention or not—the use of wiretaps, electronic surveillance, was found to have been very selectively exercised in a relatively small number of cases. Is that good or bad?

Mr. LEVI. Well, I hope it is good. That is to say, because I think there is great concern with the overuse of electronic surveillance in cases where it is not needed, and it would be preferable to think that it is not needed in so many cases, and in any event, it is being very carefully watched so that I think it would be reassuring if we know that it is being carefully watched and that the number of cases is not great.

If the suggestion is that it should be used in more cases because it is effective and is actually needed, I must say that is an area in which I have no knowledge and I can hardly comment.

Senator HRUSKA. Some opponents of wiretapping do not want merely to modify the wiretapping statutes. They would like to dispense with the practice entirely. Such a position, it should be noted, is not in accordance with the will of Congress as we know it. This fact is attested to by the vote of 85 to 4 in the Senate on this question.

But some of the opponents argue that because wiretapping is used so little it does not help, so therefore why not dispense with it.

And yet, when we consider the testimony of law enforcement officials, we are informed that in certain well documented types of cases it would be totally impossible to get a conviction without wiretapping, notably in organized crime and narcotics cases.

Have you had any occasion to study or observe such testimony?

Mr. LEVI. Well, I have read such testimony.

Senator HRUSKA. There is another subject that is of great interest generally to which I now refer and that is the constant and persistent attempts to erode the Justice Department's litigation authority.

There have been recent attempts, some unfortunately successful, to give the power of litigation to certain regulatory agencies as opposed to the Department of Justice. It is thought by some that the agencies are more attuned to the necessities of their function and that they will do a better job, that they are dedicated specialists, and therefore they will be better able to see to it that a matter is followed all he way to the Supreme Court. Yet there are some of us who find the decentralization of litigation authorization from a single governmental source objectionable.

Can you enumerate for us some of the advantages that stem from allowing the Department of Justice to have to handle the litigation involving the U.S. Government, especially on the appellate level?

Mr. LEVI. Well, I think it is terribly important that if the Federal Government's programs of law administration are to be coordinated, that one agency have that responsibility. Various matters are involved, not only the kind of enforcement which either will fit in or not fit in with the Government program, conflicts in ways of proceeding, but also constitutional interpretation and really the unified policy of the Government itself. To segment and make piecemeal throughout the Federal Government the access to the courts for the Government could be a most confusing arrangement, making it impossible to have any coordinated policy, and making it very hard to elevate the administration of justice to a level where we would all hope to see it elevated. So I do not see how one could really enter into the kind of responsibilities which are required for the Department of Justice, which means an attempt to elevate the standards for the administration of justice, if in fact the actual conduct of litigation is to be segmented and distributed throughout the Government.

Senator HRUSKA. It is well to have it coordinated, in other words.

Mr. LEVI. Yes, sir.

Senator HRUSKA. We have had testimony previously on this subject in our committee. Among the witnesses who have appeared on this subject is the former dean of Harvard, Dean Griswold, for 6 years—until June 1973—Solicitor General of the United States. He and others have indicated the importance of the Government speaking with only one voice, in accord. If there are three or four agencies each struggling for its own position in a suit involving Government policy, the Court is confronted with an extremely difficult decision. It is rather confusing to ascertain in such cases why the litigating authorities of an entity, paid for by all the taxpayers of America, are struggling against each other in court. The result of such struggles is a very fragmented Government policy.

One of the witnesses, I recall, revived the old saying that a person who represents himself in court has a fool for a client. That witness observed that this adage applies equally as well to Government agencies as it does to the individual. I will not ask you to comment on that. You might be confronted with it upon your assumption of the duties of the Attorney General.

Mr. LEVI. I hope that either the lawyer or the client will not be a fool.

Senator HRUSKA. The question of criminal justice data, as Senator Mathias has indicated, has engaged the earnest attention of our com-

mittee. I join Senator Mathias in asking your continued cooperation, as Attorney General on this subject. We presently have an arrangement whereby criminal justice data, arrest records, and other pertinent material is shared among the States, using their own system of intercommunication. We also have the Federal system for collecting criminal justice data, the National Criminal Information Center under the control of the Department of Justice, vested specifically within the FBI. The NCIC collects and stores information from both the States and Federal agencies.

There has been much discussion recently as to possibility of merging the two systems. It has been proposed that the Federal system become the primary transfer agent between the States. Such discussion raises important questions as to the Federal Government's role in local law enforcement.

Senator Ervin and I participated in hearings last year before the Constitutional Rights Subcommittee and the only request we made of the Attorney General at that time was that before a final decision was made relating to the control of the exchange of information, that we be consulted in Congress.

It is my thought decisions such as this, affecting the sensitive balance of State-Federal relations, should be considered by Congress.

It would be unfortunate we thought, and I think it is true even now, for a decision to be made administratively and then have Congress speak out 6 months or a year later to reverse such a decision because to unscramble such an egg sometimes is very difficult and very expensive, as well as troublesome.

Do you see any merit to that type of procedure?

Mr. Levi. I would want consultation to avoid that result.

Senator Hruska. We have recently heard much talk about the necessity of depoliticizing the Department of Justice. Some have advanced the notion that political factors should not be considered in the selection of the head of this Department. It is argued that the career employee is a perfect man for the job. He is removed from the pressures, he is wise, and he is tempered, and he is just.

A review of my mail indicates that there are many, many instances in my little State of a million and a half American souls where complaints are made of the tyrannical conduct of some of these civil service and career people. The tenure of the noncareer man, it should be noted, is dependent upon the good will of the people. The conduct of the entire administration and its appointees is subject to the vote of the people every 4 years. The career bureaucracy is not.

It is not to be said that the political appointee is never tyranical, because some have been, but it would seem that our present system offers some recourse to such conduct.

Mr. Levi. Well, of course he is capable of it. I don't want to go on record as indicating that that capability is only reserved for that class but they do possess it along with others.

Senator Hruska. Well, mind you, I do not condemn the bureaucracy. I am asking whether individuals within that class might be susceptible now and then to acting arrogantly and perhaps a little arbitrarily.

Mr. Levi. I think it has happened.

Senator Hruska. It has happened, has it not?

In my opening questioning of you, we discussed the revision of Criminal Code, that is bill S. 1 which was introduced a week last Friday, a bill containing 736 printed pages. In processing this bill so far we have heard 140 witnesses, accumulating a printed record of more than 8,000 pages of testimony and exhibits. It has been estimated by competent authority that between 80 and 85 percent of the 736 pages of the bill constitute law which is on the books now and has been rearranged or clarified.

Now with those facts in mind, although I will not press you to commit yourself now, would you comment whether you believe there is any great need for more witnesses to add to the 8,000 pages of testimony on these subjects?

If you would prefer to ponder that question and study those 8,000 pages first, I will be happy to defer to you.

Mr. LEVI. Well, I would much prefer to have some indication—some of the members or the Senators on this committee have asked me about that—to have some indication or comment as to what specific sections should be looked at. Then I can give my consideration directly to those points rather than to the 8,000 pages. I am more or less familiar with the American Law Institute Model Code and I think I know something of the differences between S. 1 and it. I think we ought to move along so far as we can on S. 1 and really all I have suggested is that if there is some particular concern about a particular provision, I would take a look at it. I do not suggest that more witnesses are required because actually I do not know what particular sections Senators who raise this point might have in mind. But my guess is that on most of these matters the issues have been talked out. It may be possible that some further discussion might be helpful, and I would be willing to hold myself out for that purpose.

Senator HRUSKA. One feature of this bill is that a single section regarding, for example, theft, mainly the appropriating to one's self of property belonging to another, takes the place of 70 sections in the present law which individually make it illegal to steal an airplane, to steal mail, to steal carrier pigeons, or to steal stocks and securities and so forth.

Those 70 sections are now out and there is one section. The same procedure is true in regard to penalties. Under present law, if you steal an airplane the penalty is so much. If you rob a bank, it is 20 years. If you rob a post office, it's 10 years. Instead of setting individual terms for every separate offense, S. 1 would classify offenses as to degree of harm to society, and then the severity of the sentence is placed in class A, B, C, or D.

It would be my hope that as we go into this matter we would set aside for independent debate any of the controversial issues, which are probably 10 or 12 in number, and then go on from there.

We adopted such a procedure in the case of capital punishment. And the same is true in the field of legalizing marihuana, there will be a dispute on that, and on abortion, pornography, the insanity defense, to name several.

I am confident that the Department under your guidance would find it very important and I hope of high priority to help us in these later stages on enacting S. 1.

Mr. LEVI. It certainly will.

Senator HRUSKA. Thank you.

Senator Tunney is on his way.

[A brief recess was taken.]

Senator TUNNEY [presiding]. Mr. Levi, I am sorry to have kept you waiting.

You stated before the noon recess that you do not favor an absolute privilege for newsmen in regard to subpenas and grand jury appearances. As you know, the Supreme Court ruled 5 to 4 that the Constitution does not provide newsmen with such privilege, and Mr. Justice Stewart wrote a vigorous dissent in which he expressed deep concern with the majority's premise that forcing newsmen to testify before grand juries does not significantly affect the relationship that newsmen have with their sources.

My own personal opinion is that I come down on Justice Stewart's side of the argument as opposed to the majority. I believe that if you start hauling newsmen before grand juries that it is going to impede the flow of news greatly because newsmen are going to be fearful that their conversations with sources are going to be the subject of grand jury inquiry, and perhaps the sources will be concerned that newsmen will divulge their names if they go before grand juries, and therefore will be less likely to tell what they know.

Because of the threat, as I see it, to the public's access to information, I would like to know specifically if you have thought about the standards that you would look to before you would permit a reporter to be called before a grand jury and forced to divulge confidential conversations that he has had with a source?

Mr. LEVI. Well, Senator, I'm not sure that I can spell them out completely now. Of course, the Court has spoken about that.

I would think that one would be very cautious before permitting the calling of the newspaper person before a grand jury to divulge sources. It would have to mean that there was a pressing need for it, that there was no other way of finding out important information with respect to a really important criminal matter, and I would think that presumptively one would be against it.

But I do not think—even though one likes to side with the minority frequently—that there is an absolute privilege, and I think that if one tried to think of the kinds of cases where there might be very important information affecting the safety of an individual, for example, it would seem to me that it would be hard to defend an absolute privilege, and I am not quite sure that the first amendment, if it were to be extended to newspapermen, in operation would not have to be further extended to other groups.

So I am more content, with the view that it is not an absolute privilege, but it is certainly, presumptively a privilege, and therefore one would be very careful before abusing the limited right to call newspaper men or women before the grand jury.

Senator TUNNEY. At what level of the Justice Department do you think that decision should be made as it relates to individual reporters?

As an example, let us say that Woodward and Bernstein, during the course of the Watergate investigation, had been hauled before a grand jury and asked to reveal their sources. Do you feel that perhaps that might have impeded the free flow of information to those two re-

porters, and perhaps we might never have known the story behind Watergate?

Mr. LEVI. Yes. I think there are these dangers. As you were asking the question, I thought you were going to ask at what level the decision should be made as to whether they should be called or not, and I was wondering whether it would be better to say that it should be made at a very low level or at a very high level.

But passing that, I would say that I really think it should be made by the Attorney General.

Senator TUNNEY. You think it should be made by the Attorney General.

It is a serious problem, and one that causes me great concern. I think the Woodward-Bernstein example is about as good an example as you can find. Perhaps if the decision in that case were being made by the Attorney General, the result would have been to haul Woodward and Bernstein before a grand jury and have them reveal their sources, and if they did not, I could see them in prison until such time as they did reveal their sources, and we would not have had access to that information that led to the unraveling of the Watergate matter.

Mr. LEVI. Our thoughts seem to be somewhat along the same line, but nevertheless it does seem to me that if it is a matter of great importance—and I think it is—the Attorney General's permission ought to be given before the compulsion to reveal sources is involved.

I must say, Senator, that a lot of problems may creep into our system of administration of justice because of past events, and it is going to take some wisdom to react properly and not have a distortion one way or another. I don't think a system of justice which is based upon continual improper conduct would be a good system.

Senator TUNNEY. I understand that but, of course, the problem as it relates to newsmen's privilege is relatively recent, at least as I understand it. Perhaps there are some examples in earlier history where this was a problem in this country but, as I understand it, it has really been only in the past 10 years or so that it has come to be a problem, because it was always assumed, at least by the newsmen, that they had a constitutional protection.

Mr. LEVI. Well, I don't know whether they have assumed that or not. I think they do have some constitutional protection, but I do not think they have a complete privilege, and as you have indicated, the majority of the Supreme Court has not thought so.

And I think that if the administration of the law is appropriate, it is not going to cause the kind of difficulties which you worry about. If what we get are attacks on sources of unpopular news, so that it is an attempt really to violate the first amendment, I am sure there would be a severe reaction to that, and I would assume also that it is likely that at that point there might be a change in the interpretation of the first amendment coverage.

Senator TUNNEY. In an area that I would consider to be related, the area of freedom of information, Congress as you know has been very interested in the last few years in the implementation of the Freedom of Information Act and in making sure that the law was strengthened as it was last year.

I believe that the Freedom of Information Act is one of the most important protections for the public against overweening Govern-

ment interference and indifference by making it plain that any citizen can see what the Government is doing. Within necessary limitations for security and privacy, we are assuring that Government officials do not take the law into their own hands and that they are accountable.

Openness of Government means that Government is accountable and if you are able to secrete your actions as a Government official then there is a loss of accountability.

Congress enacted legislation in the last Congress to close some loopholes in the Freedom of Information Act and to make it operate better, and the Justice Department is going to have a continuing responsibility as the legal arm of Government in advising agencies how to respond to requests and defending the Government against lawsuits that are brought against it.

Would you give your commitment to the committee to see that the Freedom of Information Act is made to work in the spirit and the letter in which it was drafted as a vehicle to open up the Government and not to keep it closed and that your bias will be in favor of openness rather than secrecy?

Mr. LEVI. Well, I haven't any problem in being biased in favor of openness. I think we will certainly make a commitment to the extent that I am involved, with others, to do our best to make that act in its present form work, certainly, in spirit. I am not absolutely sure what I have to say about some of the letter because there are some difficult problems of interpretation which may come up, and they will have to be worked out, and I am sure they can be.

Senator TUNNEY. One of the most flagrant problems of which I have been made aware is a habit by the Government of acceding to a request after a lawsuit has been brought and then refusing to honor the request the next time it is made which requires a second person who is seeking the information similarly to go to court.

Should not the Government make up its mind at the beginning as to whether or not it is going to divulge information in a particular area of concern, rather than, apparently on each individual request, making separate decisions?

Mr. LEVI. Well, there may be some reason—I find it hard to comment—there may be some reason why what appears to be the same request really isn't the same request, but if what you are suggesting is a placing of successive barriers to make difficult the disclosure of information, I think that is inappropriate. It may be useful, but I think it is very inappropriate.

Senator TUNNEY. Thank you. I agree with you. Will you continue the policy of previous Attorneys General, particularly Elliott Richardson, to require agencies to consult with the Justice Department on Freedom of Information Act decisions before the Justice Department will defend them in court?

Mr. LEVI. I must say I did not know of that policy, and I have to ask myself what authority there would be to not defend them if for some reason or other, accidentally or otherwise, they failed to consult; so I am not sure I would have the authority to make such a definite remark, but certainly from the Department of Justice's standpoint, perhaps not the standpoint of the other agencies, that kind of consultation would be very desirable.

Senator TUNNEY. Would you not, as the Attorney General, have the right to require other Department heads to consult with you on a Freedom of Information Act case prior to the time you sent your lawyers into court to defend them?

Mr. LEVI. Senator, I am really not sure about that. I am trying to imagine how the case might arise, and on what basis in effect there would be no defense because there had been a failure to consult, even though there was a defense, but it couldn't be made because there had been no consultation with the Department of Justice. I'm not sure I would want to walk into that kind of an answer. I think that would be inappropriate.

I assumed that the policy was that as a regular matter there should be consultation before refusing to divulge the information. I would hope that policy would be continued.

Senator TUNNEY. You hope that policy would be followed. Do you feel that you would use the Interagency Committee on Freedom of Information vigorously to spread the word to the agencies in Government that the act should be followed in spirit as well as in letter?

Mr. LEVI. It would be very easy for me to say yes to that, and I guess I will. I am not quite sure what this Interagency Committee is, and I think it is a good thing to confess it to you, so let me confess it.

Senator TUNNEY. There is an Interagency Committee and you will be serving on it. It would be my hope that you would use that committee to spread the word that the Freedom of Information Act should be followed in its spirit.

Under the act, each agency is required to publish a uniform set of fees for producing requested documents. Do you anticipate that you will be monitoring these fees as they are published to see that there are not too great disparities and that they are reasonable?

Mr. LEVI. Well, I assume that there will be concern and a monitoring of the fees. I doubt if I will do it personally.

Senator TUNNEY. I would anticipate that you would delegate some responsibilities.

Mr. LEVI. Well, I've been wondering a little bit in terms of some of the discussions that the committee has had, and I'm glad, you know, that I can, and I will.

Senator TUNNEY. It seems to me that frequently people who work for agency heads pick up the spirit of the boss and try and follow his attitudes and his mental set on these problems. What I am trying to do is to establish for the public record as best I can what your attitude is on some of these questions.

Mr. LEVI. Well, I think the Freedom of Information Act, while at some points it seems to me to be a bit fierce, is a good act, and I do not think a half-way compliance is a good idea, so that the spirit with which I would approach it, as important as it may be—and I'm sure this would be true in any event—is that it should be wholeheartedly supported.

I think it is a little fierce when it requires the name of a Government official who declined to reveal the information as though this designates the culprit because I am concerned that we not view Government as divided into heroes and culprits, but I can understand why it is important to know—at least to locate where the problem is—and in

any event that there will be, as far as I am concerned, wholehearted compliance.

Senator TUNNEY. Would you agree that secrecy in Government has been one of the major problems in the last 25 or 30 years as it relates to accountability of public officials?

Mr. LEVI. Well, I think secrecy and suspicion, and at times misdeeds.

Senator TUNNEY. What about the case where the fees are set so high that——

Mr. LEVI. Well, it is obviously incorrect, and it would be a violation.

Senator TUNNEY. Do you think that you could find your way clear to see provisions made for a waiver of fees in cases of public interest where persons who are seeking the information cannot afford to pay the fees, if there was an exceptionally meritorious case, and you were dealing with an indigent?

Mr. LEVI. I think that is permitted, and I certainly would be for it.

Now, I think there may be problems in determining what the actual costs are, not in the kind of case that you have just mentioned, but what the costs are, and how much administrative time it is going to take to determine how the costs should be allocated in terms of fees, so that the fees are proper and not improper and so on. And I am sure that those problems really need not be made into serious ones, and they certainly should not be excuses for noncompliance.

Senator TUNNEY. One of the important provisions in the act authorizes attorneys' fees for successful litigants in Freedom of Information Act lawsuits. This fee shifting is relatively new to the American legal tradition, although it is well established in the British system, and perhaps in some other countries on the Continent.

Do you have any thoughts that you care to share with us as to your attitude toward this fee shifting? I think it is important, when we talk about the position that the Department is going to take before the court, as to what would be reasonable fees that should be granted to a successful litigant. Do you favor this provision? Do you think it is a good one?

Mr. LEVI. Well, I think it is within the spirit of the act. Obviously, it will enable people to do more litigating. I assume the lawyers will like it, too. Overall, I think it is a good idea.

Senator TUNNEY. A related area of concern to me is the Advisory Committee Act. Notwithstanding the policy of this act that most Federal advisory committee meetings should be open to the public, many committee meetings are still closed.

I understand that virtually every lawsuit brought against the Government in cases arising from this act has been lost by the Government, but that no appeals are taken. Would you see to it that the provisions of this act are enforced, and that agencies abide by the law as it is written, and will you instruct your Department either to take cases on appeal to resolve the legal issues, or advise the agencies not to continue to obstruct the act?

Mr. LEVI. Again, it would be easy for me to say yes, but I am really not sufficiently informed about that act.

Senator TUNNEY. What do you think about the policy of not taking cases up on appeal, so that you are able on a de novo basis to try in district court each question as it arises, and using the justification for

doing so that it is not a matter of law that has decided by a court of appeals?

Mr. LEVI. I do think that depends a little bit on the reason for not taking it up. I would not think we would want to have a policy which says that every case has to appealed. There are some cases that are so unique on their facts that an appeal really would not establish—or let me say, should not establish—a general rule, so that I think the Government is entitled to some discretion in this appellate work, just as a private citizen also has that discretion.

Senator TUNNEY. What about the conflict that has arisen in the past between the Congress and the executive branch as to the power of Congress to legislate in the area of classification of documents? This was an issue during the consideration of the Freedom of Information Act. Do you have an opinion on the power of Congress?

Mr. LEVI. I assume that the Congress does have the power. I take it the question—or is this a question as to whether there is an area of some kind of reserved power in the President which is implied from the Constitution and which perhaps takes us into the area of executive privilege and so forth?

Well, we are now told that executive privilege has constitutional underpinnings, but the case to which I am referring has a footnote which says that it is not covering the relationship between the President and the Congress, so that I would assume that there is a narrow area reserved for that kind of privilege—how narrow we are not sure—which has more basis—and perhaps only basis when Congress is concerned—where it is dealing with certain matters of diplomacy or security and directed by the President himself or reserved by the President himself.

So I think there is some area other than the executive privilege kind of area. I should think it would be very doubtful that Congress would not have full authority to determine the classification.

Senator TUNNEY. Of course, as a practical matter, the President and his delegates in exercising the classification right or privilege, however we look at it, would argue that it was related to the implied authority that the President has in the Constitution to maintain the secrecy of files and documents, and that it is related to executive privilege, and in a sense, I suppose, that you could classify almost any document, and say that the Congress did not have any right to legislate in the area because executive privilege covered it.

Mr. LEVI. Yes. I don't read that particular Supreme Court opinion that way, and I assume that that footnote, which is not perhaps too clear as to the direction in which it points when it refers to Congress, means to point more to a limitation of the President's power than to expansion.

Senator TUNNEY. Do you evaluate the basis of executive privilege in the Constitution to be restrictive rather than expansive in nature?

Mr. LEVI. Well, I am not sure quite how to answer that. I think it is restricted. One has to say that the statement by the Supreme Court that it has constitutional underpinnings gives it a basis which has always been claimed, but, I think, never been stated quite that way.

Senator TUNNEY. I have only a few more questions. They relate to several areas. One is the Voting Rights Act. Do you support amend-

ments that have been floating on both sides of Congress that the Voting Rights Act should be changed to extend coverage to the Spanish speaking? And if so, how do you propose to deal with violations presently under covered jurisdictions noted by the Civil Rights Commission report?

Mr. LEVI. I think what I said was that I had understood that the President had indicated that he was in favor of the extension of the act in its present form. When pressed, I said that I would be willing to consider those kinds of amendments which you are now suggesting. I would give those matters consideration. I must say since yesterday and today I cannot truthfully say that I have given what I would call consideration to those matters.

Senator TUNNEY. I am sorry; I did not realize that the question had been asked yesterday of you.

I wonder if anyone yesterday asked you if you supported the establishment of a special Spanish-speaking Affairs Unit in the Department of Justice to enforce the Voting Rights Act so that presently covered and uncovered jurisdictions in which the Spanish speaking reside would be afforded the maximum protection under the Voting Rights Act?

Mr. LEVI. I was not asked that question. I do not know whether a special unit is the way to handle it. It is certainly the kind of thing that ought to be handled. I am just a little reluctant to say it is going to be a special unit.

Senator TUNNEY. But you feel a sensitivity to the needs of the Spanish speaking and the special problems that result?

Mr. LEVI. I would hope so; I would hope so.

Senator TUNNEY. I interpret your "hope" to be that you do.

Mr. LEVI. I use the word "hope" because I think it is so easy to feel concern and do nothing about it, and so I am trying to suggest that I do feel a concern and I hope that would be made effective.

Senator TUNNEY. Thank you.

Yesterday, Mr. Levi, you alluded to the filing of a conflict of interest statement with the committee which indicated you would disqualify yourself from the IBM case and possibly the A.T. & T. case.

Are there any other cases from which you would excuse yourself because of conflict of interest or potential conflict of interest?

Mr. LEVI. Well, the statement that has been filed, I think with the committee counsel, indicates that there are three companies where I would feel because of ownership in trust which is connected with me and my wife and my family that I would feel disqualified in connection with. And if you wish, I can name them but they have been disclosed to the committee.

Senator TUNNEY. Well, would you disclose them?

Mr. LEVI. Well, one is the First Chicago, the second is Sears, and the third is U.S. Gypsum, and it is only because they are in a trust. My wife and I will resign and trustees from these irrevocable trusts established years ago not by us. I added to that IBM because there are holdings that have been in the family for some time. Even though that would be in a blind trust, my assumption was that I should go beyond that and disqualify myself. I mentioned A.T. & T. only because—and I don't think I am disqualified there—because my son, who is a young lawyer, is an associate in the law firm which now

represents A.T. & T., although he has been removed from all cases as soon as my name was mentioned involving the Department of Justice. And, as to that, I had the feeling that I should not be the sole person to decide my qualification or disqualification, and I will take counsel on that in the event I am confirmed with the appropriate area of the Department of Justice. I think, from what I am told, that I am not disqualified but I would want to be sure that I know it is a proper course.

Senator TUNNEY. In regard to those stocks that are in a trust which benefits you or your family, do you feel that a Justice Department case involving those companies that would have an impact upon the value of those stocks would be sufficient reason for disqualifying yourself?

Mr. LEVI. Well, I said I would disqualify myself from cases involving those particular companies. I was not sure that that was required but I thought that was appropriate. I would be glad to be guided on this and, of course, the disclosure has been made to the committee, but I doubt one would be required to disqualify one's self from anything dealing with banks or mail-order businesses or whatever. This is something I really think which has to be determined objectively and not in terms of how I feel.

Senator TUNNEY. I think that both are important but the fact that you have disclosed the names of the companies and it is a matter of public record makes your decision more accountable in the future. That is the important thing. I am sure that a man with your reputation for integrity will understand what the proper thing to do is when the time arises with proper counsel.

Mr. Levi, you are probably aware that testimony will be given to this committee on behalf of certain organizations regarding your handling of an antitrust case during World War II. This case, as I understand it, concerned a cartel arrangement between Standard Oil of New Jersey and the German chemical giant, I.G. Farben. It is alleged that the settlement was very favorable to Standard and detrimental to the public interest in pursuing our war aims.

Since the matter is going to be brought before the committee and has, I am informed, been mentioned to the press, I would like to give you the opportunity while you are here to make any comment or recommendation which you feel is appropriate on the issue.

Mr. LEVI. Well, it seemed to me at the time, and I am sure to others, that it was a proper and important decree. It must be remembered that what was involved to some extent was the opening up of the synthetic rubber patents, a breaking of the arrangement between Standard Oil and I.G. Farben. It was also a period when there were various difficulties in bringing antitrust cases to trial because of the war effort. And that happened to be a case where not only was the decree entered and the patents opened up, but immediately the full facts were disclosed to the congressional committee headed by Senator Truman. And as I think has been recorded in some places, the testimony given by Thurman Arnold on that case was written by Mr. Borkin and myself. And I must say that, as I have thought of my career and the antagonisms which it might have created, I would have thought that that record of arrangements between I.G. Farben and Standard Oil of New

Jersey might have created an antagonism toward me from, let us say, Standard Oil of New Jersey—and not a record of being soft with respect to either that company or, of course, I.G. Farben, with which we had no contact whatsoever. The full record is disclosed and there were full congressional hearings on it at the time.

Senator TUNNEY. Just one last area, Mr. Levi, and that is with regard to the Immigration and Naturalization Service. Have you met General Chapman, the Commissioner?

Mr. LEVI. I don't think I have. I don't think so.

Senator TUNNEY. How do you intend to oversee policy and activities within the Immigration Service? Have you given any thought to that? I am asking this question in the context that you are probably aware that there have been charges that a coverup took place of large-scale corruption in the southwest region of the Immigration Service. This so-called Operation Clean Sweep has been in and out of the Justice Department several times and I just wondered if you had focused any attention on the problem?

Mr. LEVI. Well, I have to find out more about it, and obviously, that is one of the things that I will have to do right away if I am confirmed. I am not sufficiently well informed on that. I know there is that kind of a problem. I know there is also the problem of the illegal immigrant in this country and the problem of how that should be handled.

But as to the scandal, I really am reluctant to say very much because I am not sufficiently informed.

Senator TUNNEY. Would it be possible, after you have conducted your personal investigation, to file a report with this committee on the findings?

Mr. LEVI. Of course. As I hope you understand, up till now I think it has been improper for me to attempt to investigate.

Senator TUNNEY. I understand that. I think it would be helpful if we could have your findings submitted to the committees so those of us who are interested in it would know what your evaluation is, what the Department's evaluation is of the situation.

As you are well aware, the Immigration Service has been criticized in the past for being insensitive to the concerns of—and on occasion, the rights of—American citizens of Spanish descent who live in the Southwest, particularly when large sweeps are made through urban areas to apprehend illegal aliens. Too often there is a tendency to suspect that any person who has dark skin and "looks Mexican" must be a potential suspect, or at least looks as though he may well be illegal. There are many cases of mistaken arrest and some cases of brutality.

Do you feel that you can give this committee your pledge that you will make a personal commitment to have guidelines established to protect the civil rights of these citizens who take umbrage to the fact that they are constantly the subject of detention and questioning when these sweeps take place?

Mr. LEVI. Yes. I would be rather surprised that there are not guidelines now, but I certainly would make that pledge. But I would add to

it that I do think that the problem of administering a law where the apparent number of illegal entries are so great is one where I think some congressional action is required.

Senator TUNNEY. It is, as you know, a very, very difficult area in which to legislate, and I do not pretend that I have the answer to it. I have thought a great deal about it. On the one hand you want to make sure that illegal aliens are apprehended and that they are repatriated and you want to prevent the illegal aliens from coming into the country. And on the other hand you have got to protect the civil rights of the large Mexican American population that lives in the Southwest. How you balance those two values is very difficult, and I am not sure that anyone that I have heard speak to the subject has the answer. I know that there is a great deal of concern in the Spanish-speaking community that legislation in the area would be detrimental to their civil rights. So I would be most interested in what your views are on the subject when such legislation comes before the Congress and before the Senate.

It is my understanding that yesterday you said that you thought a responsible Justice Department official should have to approve all wiretaps and again you mentioned it today in answer to one of my questions. The present law already requires the Attorney General or the Assistant Attorney General of the Criminal Division to approve all wiretaps. Are you suggesting that you would like to see a change in the present law?

Mr. LEVI. No, I would like to see it observed. I think it should not be handled carelessly—I don't want to suggest this is now so because I have no basis of thinking that for the present circumstances. I am sure the indications are otherwise. But I don't want it to be handled in a routine way. I think it should be treated as special instances requiring great care and observance of the procedures set forth.

Senator TUNNEY. I want to thank you very much, Mr. Levi, for your testimony and for patiently answering my questions.

I do not know of any other Senator who wishes to question you at this time.

I would just like to add that if you are confirmed by the Senate, and I am sure that you will be. I hope that you have a fruitful and constructive period as Attorney General. I certainly want to wish you well as you undertake your new responsibilities.

Mr. LEVI. Thank you very much.

Senator TUNNEY. And now I will, acting for Chairman Eastland, dismiss you subject to the call of the Chair.

Mr. LEVI. Thank you.

Senator TUNNEY. The committee will recess now. There is a vote on the Senate floor and I must go and vote. The committee will reconvene after the vote and we will hear witnesses who wish to be heard. I hope that we may be able to get through the witnesses this afternoon.

[A recess was taken at 3:35 p.m. Subsequently at 4:30 p.m., the committee was recessed to reconvene on Wednesday, January 29, 1975, at 10:30 a.m.]

NOMINATION OF EDWARD H. LEVI TO BE ATTORNEY GENERAL

WEDNESDAY, JANUARY 29, 1975

U. S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:34 a.m., in room 2228, Dirksen Senate Office Building, Senator James Abourezk presiding.

Present: Senators Abourezk, Hruska, and Scott of Pennsylvania.

Also present: Peter M. Stockett, Francis C. Rosenberger, Douglas Marvin, and Hite McLean of the committee staff.

Senator ABOUREZK. The hearings will come to order.

The first witness this morning is E. Stanley Rittenhouse, Liberty Lobby, Washington, D.C.

Mr. Rittenhouse, we will be pleased to hear your testimony now.

TESTIMONY OF E. STANLEY RITTENHOUSE, LEGISLATIVE AIDE, LIBERTY LOBBY, WASHINGTON, D.C.

Mr. RITTENHOUSE. Mr. Chairman, I am E. Stanley Rittenhouse, legislative aide of Liberty Lobby, an institution consisting of American citizens who have voluntarily joined together to promote their patriotic and constitutionalist convictions. I represent our more than 20,000 member board of policy, and also appear on behalf of the approximately quarter million readers of our monthly legislative report, Liberty Letter. I appreciate this opportunity to appear today.

It would be disastrous for America to have Edward Hirsch Levi as Attorney General of the United States. Why do I make such a strong statement?

To begin with, he is the controversial choice of Nelson Rockefeller. This extremely important appointment shows that Mr. Rockefeller is wasting no time reshaping the Federal Government, a fear Liberty Lobby has held for some time. As a matter of fact, U.S. News & World Report of January 13, 1975, confirms our fear: "It was Nelson Rockefeller, according to insiders, who was behind President Ford's controversial choice."

It is apparent that Nelson Rockefeller would appoint only those who favor his position on key issues. Mr. Rockefeller favors one-world government, which can be accomplished only at the expense of America's sovereignty. To quote a Rockefeller Foundation report: "The challenge of the future is to make this world one world." To quote Nelson Rockefeller: "The answer is a supranational political being with the power to tax."

Can America afford to have an Attorney General who is not interested in maintaining our sovereignty?

Mr. Levi himself could hardly be further to the left. He heads the University of Chicago, founded by John D. Rockefeller, Sr., and recipient of many Rockefeller millions over the years. How convenient it is for Nelson to pick the president of his grandfather's school to be our Attorney General. With such an investment as the Rockefellers have in that school, Liberty Lobby seriously doubts whether any antitrust prosecutions will be brought against the Rockefeller empire by Mr. Levi. With Nelson Rockefeller's "controversial choice" in as Attorney General, the Rockefeller monopolies and cartels appear safe.

The University of Chicago has been a hotbed of leftwing causes of all kinds for years. However, Mr. Levi couldn't spot a Communist on the campus with a telescope.

For example, in 1955 he told the Senate Internal Security Subcommittee that he "recommended Norman Bursler, present law librarian, to the university but did not know him to be or to have been a member of the Communist Party."

After much questioning and getting little information, Chief Counsel J. G. Sourwine asked, "Do you know anything, sir, of any Communist group within the faculty of the University of Chicago? There was no response from Mr. Levi.

Instead of being a David who slew Goliath, Mr. Levi reminds me of King Saul who lacked the courage to throw the Philistines out of the land but coveted the glory that was rightly due David.

When the man who is nominated to be Attorney General allows the anarchists to drive him out of his own office and then cowardly yields to their occupation by setting up a temporary substitute office in the Center for Continuing Education across the Midway, this reveals weakness, not strength. There was no bold action against these criminal demonstrators who occupied the administration building of the University of Chicago while Mr. Levi was president, as the mass media have been leading the American people to believe. Only when they started to break up because of internal wrangling and boredom did Mr. Levi come to the surface. For 16 days they told him where he would have his office, or really where he wouldn't. For 16 days, he was controlled by radicals. How economist Dr. Milton Friedman can observe "that many conservatives were impressed with the very tough, hard-boiled fashion in which Levi dealt with student demonstrators" is absolutely beyond me. To let the rebellion smolder and die, with with damage and disruption in the meantime, is far from dealing in a "tough, hard-boiled fashion."

If Mr. Levi, as Attorney General, were to take that same course of action against subversives bent on destroying and disrupting our Nation, much irreparable damage would be done to America. In our precarious economic state, our deteriorating military posture, and our chaotic social condition that always results from an economic depression, America simply cannot afford to have such weak and soft leadership against criminals, radicals, subversives, and revolutionaries. We simply cannot afford to gamble with the future of our country by waiting for the criminals and subversives to give up. There is no security in ignoring or appeasing evil. Let me say that again. There is no security in ignoring or appeasing evil.

Mr. Levi epitomizes the fallacious theory that to tolerate lawlessness is to solve the problem. This works at best for a brief season, and then it eventually gets out of hand, as all appeasement of evil does. But is it any wonder he should be so permissive, having been programed since kindergarten at Chicago's Laboratory Schools founded by the liberal educator, John Dewey?

To review the fraud that has been put upon the American people, Mr. Levi is portrayed as being very tough, hard-boiled, cool, unflappable, and so forth, and I might add those quotes come from the Chicago Tribune and New York Times. To begin with, his permissiveness and tolerance of the radical anarchists was the cause of the later rebellion. When his offices were then literally occupied by the enemy, he turned and ran across campus rather than confront them. After they decided to quit their occupation and demonstration, he then came upon the scene and took credit for the victory. How shallow is his claim; how shallow was his victory.

Since Mr. Levi has already demonstrated a lack of will to ferret out the subversives on the campus of which he has been president since 1967, he would probably ignore the Communist subversaries throughout America. Gentlemen, to have a wolf in sheep's clothing guarding the sheep is foolish indeed.

To point out again his leftist leanings, I quote the Senate Internal Security Subcommittee of March 20, 1956: "He was a member of the Lawyers' Guild from 1936 until some time in the early 1940's." According to Mr. Levi's testimony before that committee, he did not formally resign from the Lawyers' Guild, but merely stopped paying dues, and they dropped him from their mailing list. For all we know, he could still be a member at heart. This is a risk America cannot afford to take. The Lawyers' Guild is a Communist-front organization described by the former House Un-American Activities Committee as the "foremost legal bulwark of the Communist Party."

I might add at this time that in coming to work Monday morning on WTOP, the CBS station here in Washington, they reported the Lawyers' Guild, that Mr. Levi had been a member of, was merely the liberal Lawyers' Guild. There was no mention of the fact that it was communistic, or the fact that it was the foremost legal bulwark of the Communist Party.

Another interesting past endeavor of Mr. Levi was his strong opposition to HUAC, which later became the House Internal Security Committee, and was recently guillotined, much to the delight of the Communists and the liberals. He vigorously attacked the HUAC for its "spy tactics" against his Communist friends. One of these friends was I. F. Ferguson. Mr. Levi signed a letter with Mr. Ferguson denouncing such intelligence activities as the HUAC was performing. Mr. Ferguson was a leader of the Communist Party of America, who was tried and convicted of criminal anarchy. Yet Mr. Levi described him as a "very distinguished member of the Chicago bar." If Mr. Levi is that opposed to digging out Communist subversion within our country, he can never serve the best interests of America. Internal security would be part of his responsibility, and his contempt for anti-Communists should eliminate him from serving at such a key position as U.S. Attorney General. Yes, if Mr. Levi has so little discernment

that he cannot recognize the likes of Mr. Ferguson as subversive, this reflects on his lack of ability to identify the enemy.

The nominee takes the un-Biblical position of opposing capital punishment. The Bible says in Exodus 20:13, "Thou shalt not murder." This refers to the criminal slaying his victim. At the same time, the Bible also clearly points out that capital punishment is part of God's plan: "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made He man," Genesis 9:6. Murders should be executed by the state.

It is dangerous for any country to have as its leaders, men who openly disregard God's word, the Bible. It is also very dangerous for America to have as its top law enforcement official one who favors the criminal to the the extent that he doesn't want him put to death under any circumstances, regardless of his crime. This philosophy breeds crime, not order. To have an Attorney General who strongly opposes capital punishment is to give a loud and clear message to every violent criminal in this country that he will never have to pay for his crime with his life regardless of how many victims he slaughters. Mr. Levi's mere "presence in the position" will contribute to greater lawlessness.

His permissiveness reveals a lack of righteous indignation. Would he be as permissive of drug and dope pushers? Was there ever a campaign to clamp down against dope and drugs on the campus of the University of Chicago while he was president? There is no evidence whatsoever that he would get rid of drugs. One solution to the problem would be capital punishment for drug pushers who are, in a very real sense, murders. Liberty Lobby has taken this position for years, yet we fear that Mr. Levi's tolerance of lawlessness and his opposition to capital punishment will only aggravate the problem, not solve it. Can America endure another year of an ever-increasing drug problem? No; and thus Mr. Levi should not become our next Attorney General.

Dean Levi was called before the Senate Internal Security Subcommittee in 1955 regarding the plan of the Chicago Law School, of which he was then dean, to bug American juries. Senator James O. Eastland, Chairman, believed that to bug a jury "does violence to every reason for which we have secret deliberations of the jury." Mr. Levi did not agree with the Senator. Senator Eastland later observed, "The fact is that you violated the very reason that we have secret deliberations by juries." Just think, a man who has committed such a crime is now being considered for the top law enforcement position in this country. America simply cannot afford to have Edward Hirsch Levi as Attorney General.

In a 1969 address before the New York City bar, he opposed conspiracy statutes, a major weapon for law enforcement officials.

As Attorney General, he would head the Immigration and Naturalization Service. Already there are reports that the Soviet Jews coming out of Russia are coming directly into this country. With increasing unemployment sweeping the country, we owe it to ourselves to stop these Soviet Jews from entering this country and making an already bad situation worse. There is nothing wrong with putting Americans first.

If Mr. Levi can be so tolerant of the Communists, as his past reveals, there would also be the possibility of other subversives coming into this country via immigration. Americans must stand up now and prevent this possibility from becoming a nightmare of reality.

Let us face facts; one of the main things Mr. Levi has going for him is that he is a Jew. Thus the liberal columnists can openly attack as anti-Semitic anyone who opposes Mr. Levi, no matter how valid the arguments they adduce. Everyone knows that the minute you oppose a Jew, you are anti-Semitic. You may remember that former Attorney General William Saxbe stated that Jews in the 1940's were enamored of communism. That is why he is the former Attorney General.

And if Mr. Levi believes in the quota system, as so many liberals do throughout the land, he will disqualify himself. Already the Jews that surround President Ford and Vice President Rockefeller are far out of proportion to their national quota.

Isn't it a strange coincidence that as soon as Mr. Rockefeller is confirmed as Vice President, a leftwing witch hunt of the CIA occurs? If there were any patriots left in that organization, they are leaving now, with only international liberals remaining. It appears the international FBI had been subverted earlier and has now been overthrown by Rockefeller forces. Next comes the domestic level. Should a liberal such as Mr. Levi become Attorney General of the United States, will Clarence M. Kelley of the FBI be next? One doubts whether Mr. Kelley can be an extreme liberal to the same extent as Mr. Levi's record indicates. It would not surprise Liberty Lobby that if confirmed Mr. Levi would then get rid of Mr. Kelley. In that event, Rockefeller would have the international Arm of America's intelligence force, the CIA, the domestic arm, the FBI, and the law enforcement bureau, the Attorney General's office, all tightly held and controlled in the palm of his hand.

Above all, one must not overlook the very cold fact that Dr. Henry Kissinger, a former employee of Nelson Rockefeller and a member of his team, is Chairman of the National Security Council, the organization that controls and centralizes all intelligence gathering forces.

Loyalty is defined as fidelity or tenacious adherence, that is wonderful when you are adhering to an American principle, the United States Constitution or the sovereignty of America. However, Mr. Rockefeller favors a new world order as against the U.S. Constitution, and a tenacious link with our enemies such as Soviet Russia and Red China as opposed to the good old American principle of not giving aid and comfort to our enemy. Yes; to be on Rocky's team, you must be loyal to Rocky, but all too often that flies in the face of being loyal to America. And from the past record of Mr. Levi with his leftwing and procommunist positions and friends, it is apparent that his loyalty is more toward Mr. Rockefeller than to America.

The Attorney General must be a man who strongly opposes all anti-American organizations, movements, and individuals. His record does not show this to be the case, but rather reads quite to the contrary. His past reveals that he not only traveled with subversives but he also belonged to their organizations.

If Mr. Levi becomes Attorney General, look for more violence, less order, greater chaos and dictatorial power such as this country has never seen.

We urge you to reject this appointment as contrary to the best interests of the American people and the American Nation.

Thank you again for this opportunity to appear today and present our views.

Thank you.

Senator ABOUREZK. Thank you, Mr. Rittenhouse.

Senator Hruska, do you have any questions?

Senator HRUSKA. I have no questions. Thank you, Mr. Chairman.

Senator ABOUREZK. Senator Scott?

Senator HRUSKA. Mr. Chairman, I do have one question.

Did you hear Mr. Levi's testimony before the committee here?

Mr. RITTENHOUSE. Yes; I have, sir, Senator Hruska. I have been here for the past 2 days.

Senator HRUSKA. Did you understand him to testify against the death penalty?

Mr. RITTENHOUSE. Yes; I did. I heard him say that. I also heard Senator Abourezk ask Mr. Levi whether he had any qualifications or exemptions to his earlier statement opposing capital punishment; and he said something to the effect that he may have had it in his mind but he had never made the statement.

Let me read the Star-News, sir, of last night, quoting Mr. Levi as saying that the death penalty, "hovers over the entire criminal system as a symbol of harshness unacceptable in the modern world, inappropriate in a society which must diminish violence." Now, when he made the statement of being totally opposed to capital punishment, he did not put any qualifications on it at that time. It was a very misleading statement.

Senator HRUSKA. When did he make it, and where?

Mr. RITTENHOUSE. It was made in 1969 when he spoke to the New York Bar Association.

Senator HRUSKA. Well, Mr. Rittenhouse, I was sitting here and I heard Dr. Levi testify. My recollection is, and the record will show, I am quite confident, that he does not oppose capital punishment, that he favors the death penalty for certain, specified crimes, for people who are convicted of taking the life of another. I very respectfully suggest that I just heard him so testify, and the record, I think, will bear me out, and so will my colleagues. How do you reconcile that with your recollection?

Mr. RITTENHOUSE. Well, sir, I am saying that I do recollect his saying that, that he did say that. I am not saying he did not. What I am saying is that he had made a previous statement.

Senator HRUSKA. His testimony here the day before yesterday and again yesterday when the subject was brought up was that he favored the death penalty for certain, specified crimes, and that he would favor the passage of a law by Congress to that effect.

Mr. RITTENHOUSE. That is correct, sir. Now, the question comes to mind—I would like to make a statement here——

Senator HRUSKA. Surely.

Mr. RITTENHOUSE. If he can flop over from the liberal position to the conservative position prior to confirmation, being candid and being honest I cannot help but have the thought run through my mind, will he flip back again after confirmation?

Senator HRUSKA. Yes, that is true. Anybody can change his mind. Have you ever changed your mind, Mr. Rittenhouse?

Mr. RITTENHOUSE. Yes; once or twice in my life, to say the least.

Senator HRUSKA. Thank you.

Senator Scott. Mr. Rittenhouse, let me reread one or two sentences in your prepared statement.

> And if Mr. Levi believes in the quota system as so many liberals do throughout the land, he will disqualify himself. Already the Jews that surround President Ford and Vice President Rockefeller are far out of proportion to their national quota.

Do you think that Jews are disqualified from holding public office?

Mr. Rittenhouse. Absolutely not, sir.

Senator Scott. How many Jews would you favor in the President's Cabinet?

Mr. Rittenhouse. Well, I don't favor using the absurd reasoning and logic of a quota system that they are using today on the American people where the Government can come in and say to the president of a company he must hire so many of this group of Americans and so many of that group of Americans, or in the case of children and their parents, that because of the color of your skin, be it white or black or what not, you must go to this school.

Now, if I wanted to apply that same absurd line of reasoning—as the liberals agree with—to Mr. Levi, he would disqualify himself since the Jewish community in America consists of about 3 percent of the population. I think there is better than 6 million, and the population of America is something like 210 million, and so, if he is going to use that same line of reasoning, if he is going to enforce this type of law upon the American people, then it stands to reason that it should also apply to Mr. Levi to the same extent as he would enforce it upon the American people. And that being the case, then I would think he would disqualify himself because already the top men that are around Vice President Rockefeller and President Ford exceed 3 percent in the case of the Jewish people.

Senator Scott. Suppose he is only half Jewish? How do you apply that?

Mr. Rittenhouse. Well, I guess in the case of half you could do whatever you want.

Senator Scott. And suppose under the old Hitler system he had a strain of Jewish blood, would you still hold him to the quota?

Mr. Rittenhouse. No. No, I am using the quota system as applied by our Federal Government to the American people today, and not some reason that Hitler had, as perverted as it might have been.

Senator Scott. I wonder if you have examined your own geneology so thoroughly as to be sure that you yourself do not have any Jewish blood? I don't want to disturb you, you understand.

Mr. Rittenhouse. It would not disturb me in the least if I did have Jewish blood in me. To my knowledge I do not, but it would not.

Senator Scott. So often bigotry arises from people who have the suspicion that maybe they are in some degree a part of the race.

Mr. Rittenhouse. Sir, the attack here, as you are trying to relate, is the fact of being Jewish. My point here is the ridiculous quota system. In other words, if you are going to judge a man not on his qualifications—if you are going to look at a student or a parent not where he lives but by the color of his skin and because of a particular quota, that

in my line of reasoning is being a racist. Now, if you are going to use this idea of a quota system here, why not apply it to Mr. Levi.

Senator SCOTT. Let me ask you this. Are you not aware that the most widespread opposition to quota systems in this country is enunciated by the leaders of the American Jewish community? Generally Jews are very bitterly opposed to quota systems because the quota system discriminates against intelligent people, and applies a different standard than that of talent. Are you not aware of that? I thought every American was aware of it.

Mr. RITTENHOUSE. No, Senator Scott. I was not aware of that, but are you leading me to believe, then, that if Mr. Levi were to become Attorney General, that he would make every effort possible to do away with this forced busing and this quota system? Is this what you are leading me to believe?

Senator SCOTT. I am not trying to lead you to believe anything, because I am sure I have an incapacity in that direction.

Mr. RITTENHOUSE. Well, I interpreted it that way.

Senator SCOTT. I just wanted to find out your views on that, so I could relate them to the rest of your opinions, and give them such weight as they might deserve under the circumstances. I do personally not only disagree with you, but strongly resent the statement that "to be on Rocky's team you must be loyal to Rocky, but all too often that flies in the face of being loyal to America."

That is totally false. It is a libel of the worst kind. It is in my judgment illogical, not to say vicious. I know of no more loyal Americans than the President and the Vice President of the United States.

Now, you have a right to believe they are disloyal. I have a right to characterize your statement as malicious and unwarranted, and I do.

Mr. RITTENHOUSE. Mr. Chairman, may I respond to Senator Scott's statement?

Senator ABOUREZK. Please do.

Mr. RITTENHOUSE. The Bible gives us the principle, Senator Scott, that a man may not serve two masters, and I think that principle also applies to nations and a citizen and his loyalty to the nationhood of the country.

Now, I was referring more specifically to sovereignty of America, maintaining the sovereignty of America when I was writing about Mr. Rockefeller. Let me quote Mr. Rockefeller; in his book "The Future of Federalism" he writes:

> No nation today can defend its freedom or fulfill the needs and aspirations of its own people, from within its own quarters or through its own resources alone, and so the nation state, standing alone, threatens, in many ways, to seem as anachronistic as the Greek city-state became in ancient times.

I am reading from the Congressional Record, December 3, 1974, page E 6918, and this was entered in the Record by Congressman John M. Ashbrook.

Senator SCOTT. Congressman Ashbrook of Ohio?

Mr. RITTENHOUSE. Congressman Ashbrook of Ohio. Let me quote Congressman Ashbrook:

> And we should not be fooled on this point. There simply cannot be a federal union [this is referring to the Atlantic Union] without some reduction in American sovereignty. Webster's dictionary specifically defines federal as "formed by a compact between political units that surrender their individual sovereignty

to a central authority [the one world of Nelson Rockefeller] but retain limited residual powers of government."

Rockefeller's proposal would mean a loss of American sovereignty. It would mean a supernational government—a government over and above that of the U.S. Government. It would mean our Nation would be subservient to the wishes of other nations.

Senator Scott. I personally, and I am speaking for the 20,000 and so members of the board of policy and the tens of thousands of subscribers of Liberty Lobby, do not favor the selling out of the sovereignty of the United States of America to a one-world government.

Mr. Rockefeller by his own testimony has stated he does.

Senator Scott. I am sure that dialog between us is not useful, but I do not draw the same conclusions since the quotation you refer to is excerpted out of context and is followed by your own interpretation of it, to which you are, of course, entitled. I do not draw by any means the same conclusion.

But I think it is proper that we should have views from the far right here, and that they should be subject to comment and criticism.

My principal joy in life has been in criticizing the views of the far left, so I want to thank you for bringing some balance to the hearing room.

Mr. Rittenhouse. Mr. Chairman. I would like to make one other point, to quote a Congressman on the other side of the fence in regard to this point. Representative Paul Findley of Illinois, who was in favor of the Atlantic Union and the one-world government that Mr. Rockefeller favors. I quote from the January 10, 1975, Congressional Record, E7468. Now, this is Mr. Findley speaking:

Mr. Speaker, the day the House confirmed the nomination of Nelson Rockefeller to be Vice President of the United States, I stated how I first became aware of his long support for Atlantic Union when I read his book "The Future of Federalism" in the early 1960's.

Actually, the Vice President's support for Atlantic Union predates the publication of this book by almost a quarter of a century. In 1964, then Governor Rockefeller was awarded the Atlantic Union Pioneer Award, together with William Clayton and the Earl of Avon. In his introductory remarks, Clarence Streit, the author of "Union Now" and President of Federal Union, recited Governor Rockefeller's long support for Atlantic Union. The following is the text of Mr. Streit's comments, followed by those of Governor Rockefeller.

And I would just like to quote the first paragraph or part of it of Mr. Streit's comments:

We are honored indeed to have with us the third of our Atlantic Union Pioneers. To my personal knowledge, Governor Rockefeller's interest in the Union of the Free goes back at least 25 years.

That really means selling out the sovereignty of America because you cannot have the sovereignty and have a one-world government at the same time.

Senator Scott. I have no other questions, Mr. Chairman.

Senator Abourezk. I have a question, Mr. Rittenhouse.

Are you objecting to Mr. Levi's confirmation on the grounds of his beliefs and philosophy or on the grounds that he is a Jew? Which is it, or is it both?

Mr. Rittenhouse. No; not on the grounds that he is a Jew. We are objecting mainly on his past record, of the fact that he is a controversial choice of Nelson Rockefeller, and for the reasons we oppose Nelson

Rockefeller, as I have just mentioned, and for the fact that we believe he is simply unqualified.

We have this fear, and I think if he is confirmed it will be proven, that he leans far too much to the left, and if that is the case, then it bodes ill for America, very much so.

Senator ABOUREZK. Then you have no objection as to what kind of blood flows through his veins?

Mr. RITTENHOUSE. No.

Senator ABOUREZK. There is one other question I would like to ask you. In your testimony, you interpreted a couple of lines in the Bible to justify capital punishment. I am not aware that the tenets of Christianity approve the killing of anyone.

Mr. RITTENHOUSE. Yes, sir, the Bible does clearly advocate capital punishment. There is another verse that I can give you, in Exodus 21:16, in the case of kidnapping. We are having a lot of kidnapping come upon the scene of America today. We have had a rash of skyjacking, and in verse 16 of chapter 21 of Exodus, we read, "And he that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death." Another example, "He that smiteth his father or his mother shall be surely put to death." The Bible is very much in favor of capital punishment. That is a Biblical doctrine. That is part of God's plan.

Senator ABOUREZK. Thank you for your testimony.

Senator SCOTT. May I add a Biblical comment? It goes: "He that giveth false testimony is an abomination to the Lord."

Mr. RITTENHOUSE. Sir, if I considered it false testimony, I would not have given it. Are you saying that I am giving false testimony by that?

Senator SCOTT. No; I just wanted to see if you would rise to the bait, and you did.

Mr. RITTENHOUSE. All right, I have risen to the bait, and I will strongly object to that statement and the implications.

If I believed in my mind or heart that I gave false testimony, needless to say, I wouldn't give it.

Senator SCOTT. No; I suppose we ought to agree with you that it is not false testimony. It is, in my judgment, based on false premises, and let us leave it at that.

Mr. RITTENHOUSE. I do not even believe that. I do not believe it is based on false premises.

Senator SCOTT. Would you agree with the statement:

Earlier this month U.S. News and World Report reported that Edward H. Levi was the personal choice of Nelson Rockefeller to be Attorney General.

Mr. RITTENHOUSE. The controversial choice; yes, sir. As a matter of fact, I have a copy of it.

Senator SCOTT. Would you agree with the assertion:

During the Second World War, Edward Levi was brought into the U.S. Justice Department to protect ongoing Rockefeller family economic, political and military joint operations with the Nazi Third Reich.

Mr. RITTENHOUSE. To be perfectly frank with you, I am not familiar with that in the least.

Senator SCOTT. I am reading from the prepared statement of the next witness, the representative of the United States Labor Party,

who will cover it. I wanted to point out that your tying of this nominee with the Rockefeller family, from your organization on the far right, will be seconded by the next witness, if they follow their prepared text, who is from the far left. You are meeting behind the barn here.

The next testimony is very close to yours. They also blame Rockefeller, as presumably a rightist, since they are the far left. You blame him as a leftist, since you are the far right. I think the coincidence of approach from both extreme groups is titillating to say the least.

Mr. RITTENHOUSE. Well, first of all, Liberty Lobby is not of the extreme right. We believe in a republic form of government. We believe in the constitutional type of government. We believe in the American Constitution. That is right in the middle between, say, anarchy and communism. So really, Liberty Lobby, if you look at the spectrums of government is in the middle of the road, and I do not like the term extreme rightwing that they throw at us and I always find it is the liberals that do that.

Now, in the case of tying in——

Senator SCOTT. You are not talking to somebody who defines himself as a liberal. I have just the same distaste for the far left, or an even greater, or at least as great, it is hard to distinguish. But I used the term far right because I thought that was the general understanding of your organization, of being from the far right.

Mr. RITTENHOUSE. Well, that is the incorrect general understanding, sir.

At the same time, I might say with no disrespect to you that I consider you a liberal.

Senator SCOTT. Well, I am sorry you said that; I am sorry you said it because I have disavowed the titles of liberal and conservative now for 33 years, and I much prefer being a moderate, but then we all like to define ourselves, and I can see your point.

Mr. RITTENHOUSE. I always define Liberty Lobby on talk programs as proconstitutional. I am a constitutionalist. I am a pro-American.

Now, in regard to the U.S. Labor Party, I have had one personal contact with them. They called me up one day, a gentleman by the name of Mr. Lederman. He called up and said that he would like to talk to me in regard to the nomination or the confirmation of Nelson Rockefeller, and he started out his conversation with me by this statement: "Now, I want you to realize that I am a revolutionary Communist." Well, right then and there I knew that we were in two different ball games.

Now that is about the only relationship I have ever had and that is about the only time I ever met behind the barn with the U.S. Labor Party, and that was the last one.

Senator SCOTT. Well, I suggest that you remain, if you have the time, and listen to the diatribe from the other side.

Mr. RITTENHOUSE. I have a copy of their testimony, sir.

Senator SCOTT. Thank you.

Senator ABOUREZK. Thank you, Mr. Rittenhouse.

The next witness is Mr. Tony Chaitkin of the U.S. Labor Party, Washington, D.C.

Senator HRUSKA. Mr. Chairman, in looking over the prepared statements submitted by the witnesses scheduled for today, I notice they

are quite extended. I wonder if it would be in order to request that the witnesses highlight their statements, to submit them in their entirety for the record and then to highlight their testimony; or, in the alternative or perhaps in addition, to set some time limit. This afternoon we must go back to the Senate floor for debate and voting.

Senator ABOUREZK. To give the committee a chance to ask questions of the witnesses, I will request that the witnesses limit their testimony to 15 minutes.

If you would be able to summarize it, we will put your prepared statement in the record, Mr. Chaitkin. That will give each of us time to ask questions. I would appreciate it very much. The committee would appreciate it.

TESTIMONY OF TONY CHAITKIN, U.S. LABOR PARTY

Mr. CHAITKIN. Thank you, Mr. Chairman. I submit my prepared statement for the record.

[The prepared statement referred to follows:]

STATEMENT OF THE U.S. LABOR PARTY

Earlier this month U.S. News and World Report reported that Edward H. Levi was the personal choice of Nelson Rockefeller to be Attorney General. Despite Levi's reported fear of "messy confirmation disputes", the Levi nomination was realized.

This testimony will demonstrate why Rockefeller wants Levi to run the United States Justice Department. Given Levi's past service to the Rockefeller family, Levi's reluctance to face exposure in open confirmation hearings will become quite understandable.

During the Second World War, Edward Levi was brought into the U.S. Justice Department to protect *ongoing* Rockefeller family economic, political and military joint operations with the Nazi Third Reich, and to protect the Rockefeller family and its executive employees from prosecution for complicity in the greatest crimes of the twentieth century. While in full possession of this information, Levi personally supervised the *official* protection and preservation of the Rockefellers' criminal collaboration with the Nazis.

From 1927, through the 1930's, and through the war, the Standard Oil Company of New Jersey and I.G. Farben firm were linked in cartel arrangements which, in the words of both partners, made a "full marriage" between them. The effective merger of the world's largest oil company and the world's largest chemical company, formed the heart of the political and economic bloc between the Rockefeller family and the Nazi Third Reich, which built the Nazi war machine, which brought Hitler to power, which created the Nazi slave labor camps, which suppressed production of vital materials and sabotaged the Allies' war effort. The block simultaneously extended the Rockefeller family empire throughout the war until the German partner expired. Then the Rockefellers took direct control of Europe.

The greatest portion of material presented here is from the records of the United States Congress itself.

On Nov. 9, 1929, the Standard Oil Company and the I.G. Farben Company signed four pacts for which negotiations had begun two years earlier: "The Division of Fields Agreement," the "Four Party Agreement," the "Coordination Agreement," and the "German Sales Agreement." The German Sales Agreement was amplified in a new pact signed January 4, 1935, and other secret formal agreements were made throughout the 1930's. The two concerns also set up joint corporations which operated in the U.S. The marriage partners officially merged the developmental efforts of the two firms. They worked together to prevent U.S. chemical firms from competing successfully with I.G. Farben. They pooled all patents and all new technology as it was developed by either partner throughout the 1930's, in the fields of chemistry and petroleum.

One process jointly developed by the Rockefeller-owned Standard Oil Company and the I.G. Farben Company was called hydrogenation, the manufacture of high-

octane gasoline from coal. This process was essential to mechanization of Hitler's army. One of I.G. Farben's hydrogenation plants, where the Standard Oil-I.G. Farben process was performed by slave laborers, was the factory in the extermination camp at Auschwitz.

It was the function of the Standard-I.G. Farben cartel to limit hydrogenation to Germany's exclusive use. The official cartel arrangement also prevented the development of synthetic rubber by the United States and Britain, even after the Nazi armies rolling on Standard-I.G. Farben Buna rubber tires had blitzed Europe. At the same time, Assistant Secretary of State Adolphe Berle told Congress that one of Nelson A. Rockefeller's specific responsibilities as chief of U.S. wartime intelligence in Latin America was to develop costly rubber plantations to cope with the shortage, a shortage which the Rockefeller family created deliberately. Does this sound familiar?

A Baron Von Schnitzler, an I.G. Farben Board member, told U.S. interrogators after the war that in late 1932, five top I.G. officials and representatives of the steel trust secretly met with Standard-I.G. agent Hjalmar Schacht, later the Nazi Economics minister, and decided to fund Hitler's next election campaign with three-million Reichsmarks.

In 1933, after Hitler came to power, John D. Rockefeller's personal representative Ivy Lee went to Germany to work for the Nazis in their international public relations effort. Lee is most famous historically as the man who pulled the stunt wherein the old Rockefeller gave away dimes to poor people who lined up at his door to receive them, thereby presenting Rockefeller as a kindly old philandropist. Lee was a Standard Oil employee when he was officially hired by I.G. Farben in Germany. He was hired by Max Ilgner, director of the N W–7 I.G. Farben intellicence division, and coordinator of the intelligence division for the Nazi Army Supreme Command. Lee told the U.S. Congress in 1934 that Ilgner introduced him to Goebbels and other ministers, that he met Hitler, and that he gave public relations advice to high officials. He received what he called "piles" of Nazi literature, including anti-semitic tracts, and he spread it internationally.

Throughout the 1930's, banks that floated loans and bonds to finance Nazi rearmament included the Dillon Reade investment bank, Chase National and the National City Bank—all Rockefeller-family controlled, and the German and British Schroeder family banks.

The International Telephone and Telegraph company—whose Board was controlled by Rockefeller representative Charles E. Mitchell and J. L. Merrill, of the National City Bank and the Grace Bank, and whose finances were controlled by the National City Bank—sent ITT's chairman Colonel Behn to meet Adolph Hitler as the first American businessman in the 1930's to do so. Behn worked out with Hitler the coordination of ITT's affairs with its German affiliate, the S.E.G., which was jointly held with ITT by the Schroeder Bank. Behn became a confidante of the Nazi Air Force chief Goering, and he arranged for ITT financing of the production of the Focke-wulf bomber for the Nazis. He arranged with top Nazis to funnel all ITT profits in Germany back into Nazi war production. Meanwhile, ITT–S.E.G. board member, Kurt von Schroeder, a high officer in the Nazi SS force, arranged that Rockefeller's ITT holdings in Germany would be declared "german" so as to protect them from expropriation. It should be noted that Allan Dulles was variously a lawyer representing the Schroeder banks, and the Dillon Reade company, Chase National Bank and National City Bank, as well as head of the American wartime OSS intelligence operation in Europe.

After the war began in 1939, Standard Oil Vice President Frank Howard went to Europe to begin official wartime collaboration between Rockefeller and the Nazis. This was only in fulfillment of the cited Standard–I.G. agreements, a section of which runs as follows:

"Each party proposed to hold itself willing to take care of any future eventualities in a spirit of mutual helpfulness particularly along the following lines: In the event of the performance of these agreements . . . by either party should be hereafter restrained or prevented by operation of any existing or future law or governmental authority, the parties should enter new negotiations in the spirit of the present agreement, and endeavor to adapt their relation to the changed conditions. . ."

Standard Vice President Howard sent a letter to Standard President W. S. Farish at 30 Rockefeller Plaza, on his meetings with the Nazis a few weeks after the declaration of war by Britain. He said,

"I stayed in France until September 17 . . . the gentlemen in the (French) Air ministry . . . I think had a suspicion of the nature of my activities in Hol-

land . . . In Holland I had 3 days of discussion with the representatives of the I.G. They . . . delivered to me assignments of some 2000 foreign patents an we did our best to work out complete plans for amodus vivendi which would operate through the term of the war, WHETHER OR NOT THE U.S. CAME IN . . . It is difficult to visualize as yet just how successful we shall be in maintaining our relations through this period without personal contacts."

After Britain's entry into the war, British intelligence began very actively probing, exposing and turning over to the United States government information about the Rockefeller-Nazi operations.

One such expose came from the work of the chief of British intelligence in the U.S., Sir William Stephenson, who was awarded the U.S. government's highest civilian honor, the Medal of Merit. Stephenson's assistant, Montgomery Hyde, in his book Room 3603, explains that British intelligence penetrated a secret meeting between Nazi official Dr. Kurt Heinrich Reiff and Standard Oil Company officials in May, 1941, in which Reiff was arranging the purchase by the Nazis of Standard's Hungarian subsidiary oil holdings. Stephenson blew the deal to the press. After the United States entered the war, there was great pressure on the U.S. government to move against the Rockefeller cartel arrangements with the Nazis, which still excluded Rockefeller's turning over to the U.S. government the synthetic rubber process.

Senator Truman's Special Committee to Investigate the National Defense Program arranged for hearings on the Standard-I.G. Farben cartel, to take place in March, 1942. The Anti-Trust division of the Justice Department of which Edward Levi was a top official, was in possession of the mountains of evidence, enough to send the Rockefeller family and its operatives to prison forever. So what was the outcome?

The outcome was not simply a whitewash, *personally engineered* to a large extent by Mr. Edward H. Levi. It was a series of arrangements whereby the United States Government ran interference for the construction of a worldwide cartel by the Rockefellers.

Secretary of War Stimson, along with his aide John J. McCloy, made the War Department one of the Rockefeller family's most politically reliable operations of the entire government. On March 20, 1942, Secretary Stimson wrote a letter to President Roosevelt, cosigned by Secretary of the Navy Knox, Attorney General Biddle and Anti-Trust Department Chief Thurman Arnold. The letter requested that henceforth all prosecutions and investigations under anti-trust or related civil or criminal laws be at the discretion of the War Department. Roosevelt agreed to this step the same day, thereby in effect suspending the laws of the United States in behalf of the Rockefeller-I. G. Farben cartel and banking interests.

Five days later, the Standard Oil Company of New Jersey signed a consent decree with the Justice Department, as a full "legal" settlement of the Standard-I. G. Farben conspiracy-liability. There was no prosecution of any Standard official. Instead, the Rockefellers were allowed to maintain their cartel arrangements with I. G. intact.

In the official biographical sketch provided by the University of Chicago, Edward H. Levi is said to have been the head of the Consent Decree Section of the Justice Department. Quoting from the decree of March 25, 1942:

"The defendants . . . hereby are ordered, directed and required: (1) to discontinue completely all existing relationships with I. G. except those required by the provisions of the German Sales Agreement and Politz agreement, and such other existing relations as may be approved by the Attorney General of the United States or the Assistant Attorney General in charge of the Anti-Trust Division."

The German Sales Agreement, one of the original cartel pacts which was thus continued in force, has apparently been deleted from the record of the Truman Committee's hearings. Interested Senators might want to dig it up.

Under Levi's consent decree, companies within the United States which belong jointly to the co-conspirators were simply renamed and all stockholdings turned over completely to Standard Oil. The so-called Standard-I. G. chemical corporation with $70 million in assets was turned over to the Justice Department's Alient Property Custodian for management during the War. This Alien Property Custodian was headed by one Leo Crowley, president of Standard Gas and Electric Company, which was owned by the Victor Emmanuel interests, which, in turn, were financed and controlled by the Nazi Schroeder Bank.

The Standard-I. G. Company changed its name to the General Aniline and Film Company—GAF. A Nazi agent by the name of Holbach, of I. G.'s General Dyestuffs, remained as a board member and consultant to GAF throughout the war; Holbach was later singled out by I. G. Farben's war crimes defendants as being most helpful in maintaining Nazi trade relations with Latin America.

The day after Levi's infamous consent decree was signed, March 26, 1942, the Truman Committee opened its hearings. Thurman Arnold, in his book *Fair Fights and Foul*, reveals that his assistant, Edward Levi, conducted the hearings before the Truman Committee. Arnold also states that Edward Levi actually wrote the report which Arnold delivered to the Congress. In Levi's unpublicized sessions, the filth of the Rockefellers' joint operations with the Nazi enemies poured out—into the back files!

Edward Levi went on to supervise the overall operation of the Anti-Trust Division as its First Assistant, starting in 1944. During that year he also became chairman of the Interdepartmental Committee on Monopolies and Cartels. At this time the Justice Department's line on cartel building, coming down from Rockefeller's Council on Foreign Relations, centered around the following slogans: "The cartels of democracy were dupes of the Nazi cartels"; that is, the Rockefellers came out on the short end vis a vis I. G. Farben in their deals; "The Rockefellers were too much interested in their pecuniary oil interests"; that is, that the arrangements were only made to keep the Germans from destroying Standard Oil; and "Cartel Building for Peace"; that is, there should be a massive world wide cartel after the war, under some sort of supranational government agency, arrangements for which would be made through the Justice Department, and that this super cartel would eliminate inter-capitalist rivalry and thus eliminate the cause of wars!

It was only after the end of the war when the German marriage partner had disappeared, that Rockefeller political circles moved to demand the breaking up of I. G. Farben in the so-called decartelization of Germany.

Today this Senate Committee is taking up where the Truman Committee left off, considering whether Edward H. Levi, who personally greased the wheels for admitted co-conspirators with the men who put Hitler in power and built his war machine, should become Attorney General of the United States. It should be considered that at the precise moment when Edward Levi, the son of a rabbi, was conducting his whitewash hearing, Jews and others were being exterminated at the Auschwitz death camp which was a joint project of I. G. Farben and the men at Standard Oil that Levi was shielding from prosecution. It must be considered—and this is of paramount importance—that today the Rockefeller family with its worldwide financial and oil empire is moving every political lever at its disposal to create a supranational government to implement fascist policies; and that Edward Levi is being called back from political obscurity to help them do it. This is Rockefeller's second time around for fascism. We ask you to take the simple step of putting direct questions to Mr. Levi as to the nature of his previous connections with and service for the Rockefellers during the Second World War and afterwards. It is our firm belief that a fair investigation of Mr. Levi's past will indicate that, rather than being placed in charge of law enforcement in the United States, Mr. Levi should be placed on trial for obstruction of justice and for complicity in the crimes for which Nazi individuals were hung at Nurenburg.

SOURCES

Record of Hearings conducted March 26—April 2, 1942, by the Senate Special Committee to Investigate the National Defense Program.

I. G. Farben, by Richard Sasuly; Boni & Gaer, 1947; preface by Senator Claude Pepper.

Sovereign State of ITT, by Anthony Sampson (assisted by Ralph Nader and Jack Anderson). Fawcett Publications, Greenwich, Conn. 1968.

Room 3603, by H. Montgomery Hyde, Farrar, Straus & Co., N.Y. 1962.

Fair Fights and Foul, Thurman Arnold, New York, 1968.

Mr. CHAITKIN. All right. I will attempt to skip some of this. It will definitely be getting out to about half a million people through our newspaper.

This testimony will cover the material that U.S. News & World Report was referring to when it said that Levi feared "messy confirmation disputes."

During the Second World War, Edward Levi was brought into the U.S. Justice Department to protect ongoing Rockefeller family economic, political, and military operations with the Nazi Third Reich, and to protect the Rockefeller family and its executive employees from prosecution for complicity in the greatest crimes of the 20th century. While in full possession of this information, Levi personally supervised the official protection and preservation of the Rockefellers' criminal collaboration with the Nazis.

From 1927, through the 1930's, and through the war, the Standard Oil Co. of New Jersey and I. G. Farben firm were linked in cartel arrangements which, in the words of both partners, made a "full marriage" between them. The effective merger of the world's largest oil company and the world's largest chemical company formed the heart of the political and economic bloc between the Rockefeller family and the Nazi Third Reich—and we will document it here—which built the Nazi war machine, which brought Hitler to power, which created the Nazi slave labor camps, which suppressed production of vital materials and sabotaged the Allies' war effort. The bloc simultaneously extended the Rockefeller family empire throughout the war, until the German partner expired.

On November 9, 1929, the Standard Oil Co. and the I.G. Farben Co. signed four pacts for which negotiations had begun 2 years earlier: "The Division of Fields Agreement," the "Four Party Agreement," the "Coordination Agreement," and the "German Sales Agreement," which was amplified in a new pact signed January 4, 1935. Other secret formal agreements were made throughout the 1930's, while the Nazis were in power in Germany. The two concerns also set up joint corporations which operated in the United States. The marriage partners officially merged the developmental efforts of the two firms. They worked together to prevent U.S. chemical firms from competing successfully with I. G. Farben. They pooled all patents and all new technology as it was developed by either partner throughout the 1930's and into the 1940's in the fields of chemistry and petroleum.

One process jointly developed by the Rockefeller-owned Standard Oil Co. and the I. G. Farben Co. was called hydrogenation, the manufacture of high-octane gasoline from coal. This process was essential to mechanization of Hitler's army. One of I. G. Farben's hydrogenation plants, where the Standard Oil-I. G. Farben process was performed by slave laborers, was the factory in the extermination camp at Auschwitz, where between 2½ million and 3 million people were killed.

It was the function of the Standard-I. G. Farben cartel to limit hydrogenation to Germany's exclusive use. The official cartel arrangement also prevented the development of synthetic rubber by the United States and Britain. Rockefeller had the patents for synthetic rubber and refused to give them to the United States, even when we were at war with the Nazis, even while the Standard-I. G. Farben Buna rubber tires had equipped the Nazis to blitz Europe. At the same time, Assistant Secretary of State Adolphe Berle told Congress that one of Nelson A. Rockefeller's specific responsibilities as chief of U.S. wartime intelligence in Latin America—which he was—was to develop

costly rubber plantations to cope with the shortage, a shortage which the Rockefeller family created deliberately. Does this sound familiar? Have you heard something like that recently?

It was not in late 1932, as I have here, but in February of 1933, that five top I. G. Farban officials and other German businessmen met with Hjalmar Schacht and agreed to fund Hitler's next election campaign with 3 million Reichsmarks. These were the Standard Oil merger partners.

In 1933, after Hitler came to power, John D. Rockefeller's personal representative, Ivy Lee, went to Germany to work for the Nazis in their international public relations effort. Lee is most famous historically as the man who pulled the stunt wherein the old Rockefeller gave away dimes to poor people who lined up at his door to receive them, thereby representing Rockefeller as a kindly old philanthropist. Lee was a Standard Oil employee when he was officially hired by I. G. Farben in Germany. He was hired by Max Ilgner, director of the N W–7 I. G. Farben intelligence division and coordinator of the intelligence division for the Nazi Army Supreme Command. Lee told the U.S. Congress in 1934 that Ilgner introduced him to Goebbels and other ministers, that he met Hitler, and that he gave public relations advice to high officials. He received what he called "piles" of Nazi literature, including antisemitic tracts, and he spread it internationally.

Throughout the 1930's, banks that floated loans and bonds to finance Nazi rearmament included the Dillon Reade Investment Bank, Chase National and the National City Bank—all Rockefeller-family controlled, and the German and British Schroeder family banks.

I have material here on the International Telephone & Telegraph Co.—whose board was Rockefeller-controlled—which sent Colonel Behn, ITT's chairman, to meet Hitler and to work out the ITT financing of the production of the Fockewulf bomber for the Nazis during the war.

After the war began in 1939, Standard Oil vice president Frank Howard went to Europe to begin official wartime collaboration between Rockefeller and the Nazis. This was only in fulfillment of the cited Standard-I. G. agreements, a section of which runs as follows—this is what the Standard Oil Co. of the United States and the I. G. Farben Co. in Germany agreed to:

> Each party proposed to hold itself willing to take care of any future eventualities in a spirit of mutual helpfulness particularly along the following lines: In the event of the performance of these agreements * * * by either party should be hereafter restrained or prevented by operation of any existing or future law or governmental authority, the parties should enter new negotiations in the spirit of the present agreement, and endeavor to adopt their relation to the changed conditions * * *.

Standard vice president Howard sent a letter to Standard president W. S. Farish at 30 Rockefeller Plaza, on his meetings with the Nazis a few weeks after the declaration of war by Britain. He said:

> I stayed in France until September 17 * * * the gentleman in the [French] Air Ministry * * * I think had a suspicion of the nature of my activities in Holland * * * In Holland I had 3 days of discussion with the representatives of the I.G. They * * * delivered to me assignments of some 2,000 foreign patents and we did our best to work out complete plans for a modus vivendi which would operate through the term of the war, whether or not the United States

came in * * * It is difficult to visualize as yet just how successful we shall be in maintaining our relations through this period without personal contacts.

After Britain's entry into the war, British intelligence began very actively probing, exposing and turning over to the U.S. Government information about the Rockefeller-Nazi operations.

One such exposé came from the work of the chief of British intelligence in the United States, Sir William Stephenson, who was awarded the U.S. Government's highest civilian honor, the Medal of Merit. Stephenson's assistant, Montgomery Hyde, in his book, Room 3603, explains that British intelligence penetrated a secret meeting between Nazi official Dr. Kurt Heinrich Reiff and Standard Oil Co. officials in May 1941, in which Reiff was arranging the purchase by the Nazis of Standard's Hungarian subsidiary oil holdings. Stephenson blew the deal to the press. After the United States entered the war, there was great pressure on the U.S. Government to move against the Rockefeller cartel arrangements with the Nazis, which still excluded Rockefeller's turning over to the U.S. Government the synthetic rubber process.

Senator Truman smelled a rat. Senator Truman's Special committee to Investigate the National Defense Program arranged for hearings on the Standard-I.G. Farben cartel, to take place in March 1942. The Antitrust Division of the Justice Department, of which Edward Levi was a top official, was in possession of mountains of evidence—and if you look at the record on this subject, it is a mountain—enough to send the Rockefeller family and its operatives to prison forever. So what was the outcome?

The outcome was not simply a whitewash, personally engineered to a large extent by Mr. Edward H. Levi. It was a series of arrangements whereby the U.S. Government ran interference for the construction of a worldwide cartel by the Rockefellers.

Secretary of War Stimson, along with his aide John J. McCloy, made the War Department one of the Rockefeller family's most politically reliable operations of the entire government. On March 20, 1942, Secretary Stimson wrote a letter to President Roosevelt, which was cosigned by Secretary of the Navy Knox, Attorney General Biddle and Antitrust Department Chief Thurman Arnold. This letter requested that, from that moment on, all prosecutions and investigations under antitrust or related civil or criminal laws be at the discretion of the War Department. Roosevelt agreed to this step the same day, thereby in effect suspending the laws of the United States on behalf of the Rockefeller–I.G. Farben cartel and banking interests.

This is what Mr. Levi referred to yesterday as, "We had certain problems enforcing the law during the Second World War." In this arena of total lawlessness, Edward Levi then functioned to handle this case with the law suspended.

Five days later, the Standard Oil Co. of New Jersey signed a consent decree with the Justice Department, as a full "legal" settlement of the Standard–I.G. Farben conspiracy-liability. There was no prosecution of any Standard official. Instead, the Rockefellers were allowed to maintain their cartel arrangements with I.G. intact.

Edward H. Levi was head of the consent decree section of the Justice Department. Quoting from the consent decree of March 25, 1942:

The defendants * * * hereby are ordered, directed and required: (1) To discontinue completely all existing relationship with I.G. except those required by the provisions of the German sales agreement and Politz agreement, and such other existing relations as may be approved by the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division.

The German sales agreement, one of the original cartel pacts which was thus continued in force, has apparently been deleted from the record of the Truman committee's hearings. I could not find it there. Interested Senators might want to dig it up.

Under Levi's consent decree, companies within the United States which belong jointly to the coconspirators were simply renamed—like JASCO and Standard I.G.—and all stockholdings turned over completely to Standard Oil. The so-called Standard-I.G. Chemical Corp., which was one of the joint corporations these two firms set up, with $70 million in assets, was turned over to the Justice Department's alien property custodian for management during the war. This alien property custodian was headed by one Leo Crowley, presiding of Standard Gas and Electric Co., which was owned by the Victor Emmanuel interests, which in turn were financed and controlled by the Nazi Schroeder Bank.

The Standard-I.G. Co. changed its name to the General Aniline and Film Co.—GAF. A Nazi agent by the name of Holbach, of I.G.'s General Dyestuffs—and this is very important, because it bears on the possible direct perjury committed by Dr. Levi yesterday—remained as a board member and consultant to GAF throughout the war. Holbach was later singled out by I.G. Farben's war crimes defendants as being most helpful in maintaining Nazi trade relations with Latin America.

Now, Mr. Levi said yesterday that he had not met with I.G. Farben at all, never. He turned over this company, this joint company of Standard Oil and I.G. Farben, to the alien property custodian, leaving this man Holbach as a consultant and member of the board. He never met with him? If he did not, it would be very strange to put him in charge of the company.

The day after Levi's infamous consent decree was signed, March 26, 1942, the Truman committee opened its hearings. Thruman Arnold, in his book Fair Fights and Foul, reveals that his assistant, Edward Levi, conducted the hearings before the Truman committee. Arnold also states that Edward Levi actually wrote the report—and he admitted that yesterday—which Arnold delivered to the Congress. In Levi's unpublicized sessions, the filth of the Rockefellers' joint operations with the Nazi enemies poured out—into the back files.

Edward Levi went on to supervise the overall operation of the Antitrust division as its first assistant, starting in 1944. During that year, Levi also became chairman of the Interdepartmental Committee on Monopolies and Cartels. Rockefeller was getting ready to move into Europe after the Nazis were upset.

At this time the Justice Department's line on cartel building, coming down from Rockefeller's Council on Foreign Relations, centered around the following slogans—his is what they used to justify what they had done: "The cartels of democracy were dupes of the Nazi cartels"; that is to say, the Rockefellers came out on the short end

vis-a-vis I.G. Farben in their deal, they were too stupid; and "The Rockefellers were too much interested in their pecuniary oil interest": that is, that the arrangements were only made to keep the Germans from destroying Standard Oil, not to build up the Rockefellers business arrangements; and "cartel-building for peace"; this is the wildest one of all and I think you have heard this argument before, that there should be a massive, worldwide cartel after the war, under some sort of supranational government agency, arrangement for which would be made through the Justice Department, and that this supercartel would eliminate intercapitalist rivalry, and thus eliminate the cause of wars. Just give the world to the cartel and then you will not have wars.

It was only after the end of the war, when the German marriage partner had disappeared, that Rockefeller political circles moved to demand the breaking up of I.G. Farben, after the Nazis had been defeated, in the so-called decartelization of Germany.

I am going to wrap it up here. Today this Senate committee is taking up where the Truman committee left off, considering whether Edward H. Levi, who personally greased the wheels for admitted coconspirators with the men who put Hitler in power and built his war machine, should become Attorney General of the United States.

It should be considered that at the precise moment when Edward Levi, the son of a rabbi, was conducting his whitewash hearing, Jews and others were being exterminated at the Auschwitz death camp, which was a joint project of I.G. Farben and the men at Standard Oil that Levi was shielding from prosecution. It must be considered—and this is of paramount importance—that today the Rockefeller family with its worldwide financial and oil empire is moving every political lever at its disposal to create a supranational government to implement Fascist policies; and that Edward Levi is being called back from political obscurity to help them do it. This is Rockefeller's second time around for Facism. We ask you to take the simple step of putting direct questions to Mr. Levi as to the nature of his previous connections and service for the Rockefellers during the Second World War and afterwards. It is our firm belief that a fair investigation of Mr. Levi's past will indicate that, rather than being placed in charge of law enforcement in the United States, Mr. Levi should be placed on trial for obstruction of justice and for complicity in the crimes for which Nazi individuals were hung at Nuremberg.

One more remark. I do not say that Edward Levi leans towards Nazism. As you saw full well yesterday and the day before, Edward Levi does not lean in any direction in terms of his own personal opinions. He has none. He has no views. He has no principles. He will disappear after being confirmed and he will follow orders. He has no spine. He is not a man.

Now, what did they do at Auschwitz under the Zyklon–B item, which came from the Standard Oil of New Jersey and I.G. Farben cartel patent pool, and under the process of creating oil from coal, and under the process of creating synthetic rubber, all of which were the point of the Auschwitz factory? This is from Shirer's The Rise and Fall of the Third Reich:

I.G. Farben chose Auschwitz as a suitable site for a new synthetic coal-oil and rubber plant. The operation of the new plant would have the benefit of

slave labor. The concentration camp opened June 14, 1940. The internationally known firm, I.G. Farben, chose this death camp as a suitable place for profitable operations.

Extermination facilities were established at Auschwitz in June 1941. Remember that Mr. Levi engineered the settlement without prosecution of the Standard Oil–I.G. Farben merger in March 1942.

A camp commander testified:

When I set up the extermination building at Auschwitz, I used Zyklon-B, which was a crystallized prussic acid which we dropped into the death chamber from a small opening. It took from 3 to 15 minutes to kill the people in the death chamber, depending on climatic conditions. We knew when the people were dead, because their screaming stopped. We usually waited about half an hour before we opened the doors and removed the bodies. After the bodies were removed, our special commandos took off their rings, and extracted the gold from the teeth of the corpses. We built our gas chambers to accommodate 2,000 people at one time.

He explained that not all the incoming prisoners were done away with, at least not at once, because some of them were needed to labor in the I. G. Farben chemical works, until they became exhausted, and were ready for the final solution. "Children of tender years were invariably exterminated, since by reason of their youth, they were unable to work."

Do you think you might probe this matter a little before passing on the nomination? Do you think that people might be a bit concerned? What is going to come out beyond this? Are you going to let this man go through without calling him back, without questioning him—very politely, if you wish—about what his personal role was, whom he met with, and what his intentions are for replicating his actions in the Second World War right now?

Senator ABOUREZK. I have no questions, Mr. Chaitkin. Thank you very much.

The next witness will be Frederika Blankner, president of the Chicago Property Owners Association. Ms. Blankner, if you would summarize your statement so that it does not take you any longer than 15 minutes, we would be grateful.

TESTIMONY OF FREDERIKA BLANKNER, PRESIDENT, CHICAGO PROPERTY OWNERS ASSOCIATION

Ms. BLANKNER. I will do my best, Mr. Chairman.

I would like to preface my remarks, if I may——

Senator ABOUREZK. Would you pull the microphone over?

Ms. BLANKNER. Yes.

I would like to preface my remarks, if I may, by an observation on something that occurred yesterday. Senator Tunney was interrogating Dr. Levi on a certain point. He said that he felt that Dr. Levi might be ready to disqualify himself because of conflict of interest in any cases involving IBM and other corporations, and Dr. Levi readily agreed that he would and should on those occasions. Now, my statement has to do with a disqualification by Dr. Levi because of conflict of interest in certain fields of eminent domain, and in view of his readiness to disqualify himself yesterday in IBM and so on. I do not contemplate any problem concerning this recommendation.

So, I address you, Mr. Chairman, and representatives of the news media, and ladies and gentlemen. The subject of my remarks is a remedy to resolve Edward H. Levi's conflict of interest between self-protection and protection of the Constitution and the public, as a defendant in a lawsuit currently, against him and others, in Federal court, for the big steal of south campus during his presidency of the University of Chicago, through alleged unconstitutionality, conspiracy, fraud, misuse of eminent domain and of $48 million of city and Federal tax money to rob 6,000 citizens, mostly blacks, of their homes, property, neighborhood and civil rights; together with need to remedy general insensitivity to the meaning of the Constitution in the field of eminent domain.

To identify myself, and to explain why it is that I am appearing before you, I let you know that I am by birth a many-generation American, and that I am by profession a university professor, author, and journalist. My ancestry is prerevolutionary, and my most recent foreign ancestor immigrated about 130 years ago, in 1846. As a result, my ancestors are among the Americans who have helped build and preserve our country as soldiers, pioneers, and settlers in all our wars and otherwise, from Massachusetts, New York, and New Jersey to Nebraska and New Orleans, and from prerevolutionary combats through the Civil War. Their national origins were English, Scotch, Irish, Welsh, French, and Bavarian; with, I am told, a dash of Indian, in which naturally, as an American, I take special satisfaction.

I have endeavored to keep my professional life a service to America in continuation of the contributions made by my forebears, and part of this is my appearance before you today to cooperate in making the American system work, a responsibility that every citizen shares. For the citizen, not the President, is the keystone of the Nation.

After 35 years of fellowships, teaching, or related activities in the University of Chicago, Harvard University—Dante Prize—Wellesley College, Vassar College, and elsewhere, I am now professor emeritus in Adelphi University, L.I., New York; formerly poet-in-residence and chairman of the classics department there, teaching America's heritage-ideology-goals, as rooted in the classics, in cooperation with President Eisenhower's "call to greatness for a resolute people." In these seminars, I admonished my students that, in order to keep our country, we must be worthy sons and daughters of the Founding Fathers.

If the Constitution is attacked, I have told them, and certainly if it is attacked in our own lives, we must defend it, if we are to keep our country. Washington, Jefferson, and Lincoln can do nothing for it now. Our responsibility to defend the Constitution as citizens is part of our heritage.

In this regard, I have told them that any one of us may at any moment become like the little Dutch boy who needed to insert and keep his finger in the dike, in order to save our land from being inundated by unconstitutionality. As a result, for 7 years now, since 1968, I have been endeavoring to practice what I teach by defending the constitutional rights of myself and all Americans in the field in which my constitutional rights happened to be attacked: namely, in the fraudulent and illegal taking of our homes and at times life sav-

ings by government, under the guise of eminent domain, in conspiracy with private corporations which desire the land.

This attack on myself and over 6,000 other property owners and tenants, mostly black, has come about through the South campus slum-clearance project of the University of Chicago, a private corporation, acting in alleged conspiracy with the city of Chicago; a project christened the big steal of South Campus by a top official in city hall. I have been supported in my spearheading of resistance in the courts by the fact that, after the city of Chicago took title of my property from me for the University of Chicago in March 1969, my fellow members of the Chicago Property Owners Association elected me president and have continued me in that office.

I have been mightily assisted also by numerous local and national representative organizations appearing as "friends of the court," whose members are among those affected by actual or threatened misuse of eminent domain for private purposes. A Congressman has also been prominent among the "friends of the court," Congressman Roman Pucinski, during a previous appeal to the U.S. Supreme Court. Alderman Lynn Duprey has been helpful constantly, and supported us throughout for what is right. The Chicago Real Estate Board and the Chicago Council of Lawyers have appeared on occasion as "friends of the court." And "friends of the court" throughout, urging hearing and adjudication of all the issues, have been: The National Association for the Advancement of Colored People, the Dearborn Real Estate Board, the Janitors' Union, the Illinois Small Businessmen's Association, the citizens' action program, the Chicago Property Owners Association, the Washington County Landowners Protective Association, Sharpsburg, Md.; the Vanderbilt University Neighborhood Association, Nashville, Tenn.; the national American Landowners Association, and very importantly, the student government of the University of Chicago.

Returning now to the new issue of the conflict of interest for Dr. Edward Levi as Attorney General designate, an issue not mentioned in the litigation in which the aforementioned "friends of the court" have participated, it is to be noted that the South Campus project which was initiated by the city of Chicago at request of the University of Chicago in 1962, a fact published by the university, has been coming to fruition concurrently with Dr. Levi's presidency of the university since 1968, and with his knowledge throughout.

The main promulgator of the South Campus project is known to be President Levi's brother, Professor Julian Levi, who is executive director of the Southeast Chicago Commission, founded and funded by the university in 1952, in large part for development of the South Campus project, and more recently chairman of the Planning Commission of the City of Chicago Department of Planning and Urban Development, which includes the Department of Urban Renewal.

Professor Julian Levi is known also as the author of the enabling law, the Consolidated Urban Renewal Act of 1961, which made possible the taking of the South Campus land from the public by the city for the university under eminent domain.

Accordingly, President Edward Levi and his brother, Professor Julian Levi, are both defendants; along with the city of Chicago and

others, in the current lawsuit in Federal Court—U.S. Court of Appeals, Seventh Circuit, Nos. 73-1568, 73-1569, appealing from U.S. District Court of the Northern District of Illinois, Eastern Division, No. 72-C 1810, Richard V. McLaren, judge—now on its way to the U.S. Supreme Court, still seeking a first hearing of the evidence over opposition by both President Edward Levi and Professor Julian Levi, and by the other defendants, on narrow technical grounds.

Mr. Robert Elliott, General Counsel of HUD, to whom I was referred by the White House, has a complete file of the legal papers.

The evidence of the alleged fraud, conspiracy, misuse of eminent domain and of tax multimillions is undenied by the brothers Levi or by anyone, being undeniable, based as it is exclusively on official university and city publications. Yet the concerted opposition of the alleged conspirators, including the brothers Levi, has successfully prevented to date that the evidence should see the light of day in court, though it has been abundantly and sympathetically exposed in the news media through editorials and otherwise, including the official student newspaper of the university, the Chicago Maroon—see especially dialog of about 20 open letters, mainly to Dr. Levi, between December 1, 1971 and February 22, 1972.

For this constant and dogged assistance by the news media in our crusade for justice for the public, of which the Chicago Maroon citation is an example, all citizens are deeply grateful.

I refer here to the innumerable news stories, photographs and cartoons in Chicago land's Real Estate Advertiser, published by the Law Bulletin and the Chicago Tribune; the former Chicago Today, the Chicago Sun-Times, the Chicago Daily News, the Associated Press, the community newspapers—Hyde Park Herald, Voices, Rap Reader, the ABC-NBC-CBS, local news stations, radio stations, and networks, as well as to the national press—because all of these media have vigorously and persistently championed citizens rights as reported in this case, in which Dr. Levi and his brother are defendants.

And so, I take this occasion to express, also as a fellow journalist myself, heartfelt appreciation personally to the representatives of the news media present here today for their exposure of the facts in this case, as one example of the endless ways in which the American free press, and at times the free press alone, systematically protects our country. Indeed, for whatever advance or strength we have acquired in our crusade for justice, as is true also in many crusades by others for the public benefit, thanks are due mostly to the watchfulness and cooperation of the media.

Senator Abourezk. Ms. Blankner, 15 minutes have expired. What I would like to do, hoping not to appear rude or discourteous, is to ask you to submit the remainder of your statement which can be printed in full in the record. We have another witness here today, and I want to adjourn the hearings this morning. We have one witness left to go.

Ms. Blankner. May I say, Mr. Senator, that I was given 20 minutes in advance. May I have 3 more minutes to give you the main part of my address?

Senator Abourezk. Please do.

Ms. Blankner. So clearly, this conflict of interest must be resolved before Dr. Edward Levi can be expected to take over the duties of

100 percent enforcement of the Constitution as chief law enforcement officer of our Nation.

The remedy for resolving the conflict of interest that we respectfully submit for consideration by the Senate committee is that, because of said conflict of interest, Dr. Levi disqualify himself in advance from participating, except as defendant or plaintiff, in any decision or litigation, current or future, by the Justice Department or otherwise, relating to the University of Chicago south campus slum clearance project, or to any like university or institutional project anywhere in the country, that may have been patterned in whole or in part on the south campus project. This would mean that a special attorney outside of the Justice Department would be appointed to serve in place of the Attorney General in decisions or litigation in this urban renewal field.

In any case, it is respectfully suggested that the Senate committee scrutinize the south campus project that has come to fruition during Dr. Levi's presidency of the university, in all its aspects, and especially in relation to sensitivity or insensitivity to the Constitution.

I make this suggestion because my long study of the project in detail, in connection with the litigation, has given me the impression of a pervasive insensitivity to the meaning of the Constitution and of the rights of citizens, including the rights of blacks, that is at times naive, and always incredible. And in this respect, I call your attention, Mr. Senator, to this article that forms part of the presentation, which relates to the 27-year-long background of the south campus project: of conspiracy between the city and the university for land control and black removal.

Now, the balance of my report consists of the description by the judges themselves of the charges in this case, and by Chief Judge Swigert, his dissenting opinion, saying that the property has been taken unconstitutionally, without due process of law. It consists also of quotations from Russell Kirk, entitled, "Would Levi Quash Prosecutions in University of Chicago Urban Renewal Case?" bringing out that the Justice Department now has under consideration taking a hand in this case to benefit the public; and the conflict of interest is clear that can be resolved only by Dr. Levi disqualifying himself from participating in these considerations. Otherwise, he would have the power to quash, as this column says, quash these hearings for self-protection, without protecting the public; which is, of course, the main purpose and object of the post of Attorney General. Thank you.

[The exhibits referred to were filed with the committee.]

Senator ABOUREZK. Thank you very much, Ms. Blankner, for your testimony.

Ms. BLANKNER. Are there questions?

Senator ABOUREZK. I have no questions. I hope you will be able to stay for the last witness, who is a representative of the National Congress of American Indians.

Ms. BLANKNER. Oh, I will indeed.

Senator ABOUREZK. I heard you say you did have some Indian blood. What tribe, by the way?

Ms. BLANKNER. I believe it's Cherokee.

Senator ABOUREZK. Well, I won't comment. I am from Sioux country myself.

Ms. BLANKNER. I see. Thank you for your attention.

Senator ABOUREZK. Thank you very much.

Ms. BLANKNER. I am a little surprised and disappointed, Mr. Senator, that there are no questions.

Senator ABOUREZK. Well, I am sorry.

The next witness is Mr. Charles Trimble, executive director of the National Congress of American Indians.

Mr. Trimble, I would like to ask if you could present your statement in a time limit of 15 minutes. I was looking it over, and it looks like you probably could. I would appreciate that.

TESTIMONY OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TRIMBLE. Mr. Chairman, I am Charles Trimble, executive director of the National Congress of American Indians. I am appearing today as the representative of the largest, oldest, and most representative organization of Indian tribes throughout the United States.

We are not here to oppose the nomination of Mr. Levi. However, we are concerned, and would like to impress upon him and upon members of this committee the gravity of the situation facing the Indians because of the failure by the Justice Department to live up to the high standards of conduct owed to the Indians by this Nation's trust responsibility. The public has been made aware of the early rip-offs of vast acreages of Indian land, but few know of the well-documented continuing theft that, in fact, is going on as we sit here today.

We Indians have always known that Federal agencies didn't properly represent our interest when other interests were present, but we have had a problem getting this message to the American people. However, the conflict became so obvious and potentially embarrassing to the Government that in a message to Congress on July 8, 1970, the President of the United States, President Nixon, had this to say about the Interior and Justice Departments, and I quote:

> The United States government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently, they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights, and the private interests of Indians in land which the government holds as trustee.
>
> Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation, and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

President Ford has reaffirmed that position. I think that that is all a part of the politics of expectation.

Gentlemen, don't you think that the very dignity of the United States itself is in danger when you have one highly placed official after

another decrying the failure of the trustee United States to live up to its fiduciary responsibility of the highest and most exacting standards?

I wish I could say that the record of the Department of Justice had improved since that Presidential declaration. But the situation is worse and is rapidly deteriorating. And nowhere is this more true than in the area of tribal water rights. The Justice Department wished to introduce a bill last year to catalog Federal water rights that would have defined the Indian's water rights right out of existence.

Regional shortages of water, national and international shortages of coal and other power-related minerals and resources have increased the raids on tribal water and other related tribal resources by energy companies, non-Indian farmers, corporate industries, and real estate developers.

In addition, the energy crisis has actually intensified the conflict within the Justice Department by increasing the number of interests they have to serve in the name of Project Independence or some other catchword for furthering national policy, just as Manifest Destiny provided the excuse for land grabs in the past. Catchwords have been known to hold rational analysis in chains for upwards of 50 years and more.

I would like to get into some specific examples of what I mean by a failure by Justice and Interior to resolve this conflict of interest.

The Jicarilla Apache tribe on the Navajo River are not only being denied the right to exercise their water rights, but the river has become so depleted by a Bureau of Reclamation project that the fish have died.

Senator ABOUREZK. Is that the San Juan Channel project you're talking about?

Mr. TRIMBLE. Yes. The Justice Department has not seen fit to bring any action to correct this situation. In *U.S. v. Aamodt*, the Pueblos along the mainstream of the Rio Grande were originally denied a day in court, and have been locked in a desperate struggle to preserve their water rights. It is not at all clear that the Justice Department is pleading the strongest Indian case due to conflicts of interest within that Department.

Also, in the water-short Southwest, the tribes along the Colorado River are asking for time to study certain stipulations prepared by officials of the Interior and Justice Departments. These tribes believe the proposed stipulations will cause the loss of priorities in the Colorado River and rights to which the tribes assert they are legally entitled. I am enclosing a letter for inclusion in the record, from Senator Jackson, regarding this.

Senator ABOUREZK. That will be accepted.

[The document referred to follows:]

JANUARY 15, 1975.

Hon. WILLIAM B. SAXBE,
Attorney General of the United States, Washington, D.C.

MY DEAR MR. ATTORNEY GENERAL: This letter is in reference to the proposed Stipulation of Present Perfected Rights prepared by officials from your Department and the Department of the Interior pursuant to the case of *Arizona v. California* in the Supreme Court (373 U.S. 546 (1963); 376 U.S. 340 (1964)).

Recently, tribal officials from the Fort Mojave, Chemehuevi, Colorado River, Fort Yuma, and Cocopah Reservations appealed to the Committee seeking a delay on a decision by the United States with respect to the Stipulation. (See attached Resolution). The tribal official contend that if the Stipulation is accepted by the

United States, the respective tribes will lose priorities in the Colorado River and rights to which the tribes assert they are legally entitled

I am advised further by tribal officials that the Department of the Interior entered into a contract with a private consulting firm to determine whether or not the tribes could justify additional irrigable acreage on their reservations which they assert was not included in the evidence submitted in the *Arizona* v. *California* case. The contractor will complete his work on February 10, 1975, and the tribes and the Bureau of Indian Affairs will need several months to analyze the report to support the Indians' contention concerning their rights and interests in the Colorado River.

The Stipulation holds important implications for the future economies of the affected Indians and non-Indians. Considering that the *Arizona* v. *California* decision was rendered by the Supreme Court over ten years ago and that the Stipulation as to present perfected rights has been in process of formulation since 1966, I do not envision that a delay of several months to permit the Indians to develop their case will jeopardize the interests of either of the parties. Therefore, I respectfully request that you defer the final decision on the Stipulation until July 1, 1975, in order that the Indian interests may be adequately considered in this issue. I am taking the liberty of sending a copy of this letter to the Secretary of the Interior because of the trustee responsibility he carries with respect to the five tribes.

Sincerely yours,

HENRY M. JACKSON, *Chairman.*

Enclosure.

Mr. TRIMBLE. There are two cases with which I am personally and immediately acquainted, involving Indian water rights, in which the conflicts of interest are all-encompassing. They are the *United States and the Coleville Confederated Tribes* v. *Walton*, and the *Lummi Indian Tribe* v. *Bel Bay Community and the State of Washington*. Both of these cases are in the Federal courts of the State of Washington. In both cases, the Department of Justice is acting, in my view, in a manner entirely in opposition to the Indian interests. I am offering for the record a copy of a letter dated January 20, 1975, from the lawyer of the Colville and Lummi Tribes, the Honorable Alvin J. Ziontz, to Kent Frizzell, the Solicitor of the Department of the Interior, in which Mr. Ziontz reviews in detail the tragic consequences of the failure of the Department of Justice adequately and professionally to represent those tribes in the above-mentioned *Walton* and *Bel Bay* cases. Mr. Chairman, I offer that for the record.

Senator ABOUREZK. That will be received.

[The document referred to follows:]

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF AND CHESTNUT,
Seattle, Wash., January 20, 1975.

Re *Coleville Confederated Tribes* v. *Walton* and *Lummi Indian Tribe* v. *Bel Bay.*

MR. KENT FRIZZELL,
Solicitor, Department of Interior, Washington, D.C.

DEAR KENT: Time is running out in the *Walton* and *Bel Bay* cases. I expect Judge Powell, in *Walton*, to require the parties to incorporate their positions in a pre-trial order to be lodged in the next thirty days, if not sooner. In *Bel Bay*, the various parties have informed Judge Voorhees that they will lodge a stipulation of facts by mid-February and be prepared to brief and argue their cases soon after. At this late date the inability of the respective tribes to secure support, or for that matter even a clear-cut position from their coplaintiff, the United States, on two crucial legal issues has handicapped our trial preparation, will make a shambles of the cases and certainly threatens to embarrass the United States before the federal judges involved. If this matter is not resolved promptly, I predict we will have a repetition of the same sort of mess which has occurred in the *Aamodt* case, a case which, like these two cases, was entered and prepared by the United States Justice and Interior Departments in a fatally ambiguous fashion, was long pending before the court and now is cemented into a confused and farcical trial posture.

The two specific issues which are creating the trouble are the question of the limitations imposed on the Secretary and the Department by 25 U.S.C. § 381 and the question of title to water rights within the boundaries of the reservations.

In 1887, Congress enacted § 381 as § 7 of the General Allotment Act. That section conferred upon the Secretary of the Interior the power to make a "just and equal distribution" of water *among the Indians residing on the reservations*. It did not authorize the distribution or patenting of water rights to non-Indians. If the Interior and Justice Departments do not agree with this contention, it is imperative that you so advise us. And if the United States cannot support us in this, we ask that it refrain from taking a position hostile to the tribes on that question and insure that Justice Department attorneys, if pressed, will inform the court that the United States takes no position on this issue, believes the question is before the court for resolution "in a case of first impression", and considers the tribe free to advance its own contentions on the matter.

A second and even more crucial question is whether the non-Indian grantee of an allottee can claim a water right as the result of the transfer of land. As you know, it is our contention that the right to the use of all water upon, under, bordering or tributary to a reservation resides undiminished in the beneficiaries of the reservation; federally recognized Indian tribes. There is, as we very well understand, a hard-core group of attorneys within the Departments of Interior and Justice who advance the opposite view. Since the matter has never been clearly and definitely resolved where the grantee's claim has no basis in the statute, treaty or executive order establishing the reservation, we find it difficult to understand why the trustee would advocate such a position. Here again, we must ask that you promptly advise us as to whether the United States is going to support the tribes in their position. If you are not, then we must again ask that you refrain from interfering with the tribes' assertions and/or taking a position actually hostile to that of the tribes.

The importance of the issue can hardly be overstated. A holding that non-Indians inhabiting former allotments acquired a share in tribal water rights would have a disastrous effect on reservations throughout the arid West. It would give largely non-Indian landholders a death grip on the waters of the reservation, apply a multiplier effect to the destructive consequences of the allotment act and freeze the Indian people into inability to develop or even properly administer water within their own reservations.

As you can imagine, the words spoken by federal attorneys representing the United States in these two cases have tremendous impact on the federal court. Even the most casual indication to the court that the United States is opposed to or skeptical of the tribal contention can have such a result.

Therefore, we know you will understand clearly that it is crucial that either the United States support the tribe, or that they carefully avoid indicating to the court in any manner, explicitly or implicitly, any skepticism, hostility or disagreement with the tribal position. We must ask that such a commitment be made promptly and in a manner which will be communicated to the Justice Department, whose attorneys are functioning on behalf of the United States in the litigation. Because of the brief time remaining, it is imperative that action be taken in a matter of days.

We would hope to be able to enter a pre-trial order in *Walton*, in which nothing is stated as to the parties' contentions which would in any way indicate that the United States is opposed to the tribes in these matters. The entry of such a pre-trial order is, however, held up completely because the United States attorney is awaiting direction from the Justice Department which in turn is reflecting the views put forward by some solicitors who are skeptical of the tribes' position.

Please feel free to call me if you have any questions concerning this matter, but I can assure you that its importance and urgency are of the highest order and require your personal attention.

Sincerely,

ALVIN J. ZIONTZ.

RESOLUTION OF CONFEDERATED TRIBES OF THE LOWER COLORADO RIVER

Whereas, the Confederated Tribes of the Lower Colorado River, consisting of the Fort Mojave, Fort Yuma, Cocopah, Colorado River and Chemehuevi Indian Tribes, was formed for the primary purpose of protecting the water rights of the five Indian reservations in *Arizona* v. *California*; and

Whereas, the Supreme Court's March 9, 1964, decree in *Arizona* v. *California* required the States of Arizona, California and Nevada and the United States to furnish a list of so-called present perfected rights (with the claimed priority dates) within 2 years or by March 9, 1966; and

Whereas, there have been negotiations and discussions that have taken place periodically since 1964 aimed at reaching a stipulation with respect to the so-called present perfected rights, but no such stipulation has yet been executed; and

Whereas, the five Colorado River tribes have not been kept informed of the status of these negotiations by their trustee despite the fact that their vital interests are directly and immediately involved; and

Whereas, the five Colorado River tribes made known their concern to the Interior Department and in mid-1974 the Department agreed to provide the tribes with the funds necessary to make certain essential studies required in connection with the proposed stipulation; and

Whereas, the Bureau of Indian Affairs then entered into a contract with a consulting firm that called for the submission of its report on February 10, 1975; and

Whereas, on the basis of information already obtained, it is evident, that the existing decree in *Arizona* v. *California* was based on an inaccurate and incomplete record, and that the proposed stipulation is contrary to both law and fact and is diametrically antipodal to the interests and rights of the five Colorado River tribes; and

Whereas, the Solicitor of the Interior Department has notified the Bureau of Indian Affairs that the Interior Department will advise the Justice Department of its position with regard to the proposed stipulation by January 17, 1975, before the completion of the report contracted for by the Bureau of Indian Affairs: Now, therefore, be it

Resolved That:

1. The Confederated Tribes of the Lower Colorado River are unalterably opposed to the proposed stipulation in its present form, both as to fact and law; and

2. That the Confederated Tribes, based upon the records in *Arizona* v. *California*, feel that by reason of the inherent conflict of interest within the Interior and Justice Departments, they were deprived of adequate representation by reason of the conflicting interests between their claims and those of the Bureau of Reclamation or agencies under contract with the Bureau of Reclamation; and

3. It is believed that by July 1, 1975, the Confederated Tribes will have marshaled the essential evidence and related data to permit them to formulate a new draft of stipulation specifically detailing the extent and nature of their present perfected rights as they relate to other claimants on the stream; Be it further

Resolved, That the Secretary of the Interior forthwith take all appropriate steps to see that the time for the Confederated Tribes to prepare their presentation to the Department of the Interior be extended to July 1, 1975.

Dated: January 14, 1975.

LLEWELLYN BARRACKMAN
(And 5 others).

Mr. TRIMBLE. These are only a few examples of cases where conflicts of interest are preventing the Justice Department from fulfilling its trust responsibility in the protection of Indian water rights.

Another broad area in which the Attorney General of the United States has failed the American Indians involves the ever-contentious area of Federal-Indian-State relationship. Particularly crucial is the field of taxation in the States which seek to tax the Indian people, their properties, and their income. Chief Justice John Marshall correctly declared the threat the Indians are now confronted with: "The power to tax is the power to destroy." Unless the Attorney General of the United States takes immediate action against State encroachment through taxation, the American Indians will be destroyed.

In 1970, the Administration proposed legislation to correct some of the abuses pointed out in the President's message. One of these was the Indian Trust Council Authority. Although we supported that concept, we had our own recommendations to Congress to improve the legislation.

After all that had been said, done, and pointed out what was wrong in the protection of Indian tribal natural resources, the Justice Department recommended to the 93d Congress that the trust council bill was to create a small staff of only seven or eight attorneys to litigate, according to their figures, more than 200 cases. We are aware of many more cases that should be filed, and would be filed but for the conflict of interest. We don't think the Justice Department is really interested in solving the conflict of interest problems.

What conflict, indeed? There does not seem to be any conflict of interest standing in the way when Justice and Interior are faced with the urban areas of the West and Southwest, with their larger and more influential lobbying power.

I hope that I have been able to impress upon you that this is a severe problem. We hope that you will explore ways with Mr. Levi to minimize the conflict of interest in existing cases. Ask Mr. Levi to commit himself to investigate means by which the other interests will be separated from our unique and historical legal position with the Federal Government.

We believe that a long-term solution should be the goal, and that the Attorney General Designate should be asked to take a realistic position on the Trust Council Authority, or provide recommendations for an adequate alternative.

I thank you for the opportunity to present what I believe is the legal and moral obligation of the Federal Government towards Indians, and to present our suggestions as to how the new Attorney General can establish a course of action to improve the tarnished image of the past. Thank you, sir.

Senator ABOUREZK. Thank you, Mr. Trimble.

I don't know whether you were here yesterday during Mr. Levi's testimony, when I asked him about supporting the concept of an Indian Trust Council Authority, with nonconflict cases being retained in the Justice Department. As I understood his testimony, he generally supported that concept; and in relation to the rest of his testimony, he was pretty definite about it.

Mr. TRIMBLE. We will follow up on that, sir.

Senator ABOUREZK. I want to thank you very much for your testimony.

Mr. TRIMBLE. Thank you.

Senator ABOUREZK. At this time, I will declare the hearings adjourned. I want to thank all of the witnesses.

[Whereupon, at 12:05 p.m., the committee adjourned.]

○